

(29,105)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 555.

RAYMOND L. FRICK AND N. SATOW, APPELLANTS,

vs.

U. S. WEBB, AS ATTORNEY GENERAL OF THE STATE OF
CALIFORNIA, *ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.

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1 In the District Court of the United States in and for the Northern District of California, Southern Division.

In Equity.

No. 694.

RAYMOND L. FRICK and N. SATOW, Plaintiffs,

vs.

U. S. WEBB, as Attorney General of the State of California, and Mathew Brady, as District Attorney of the City and County of San Francisco, State of California, Defendants in Equity.

Bill of Complaint.

To the Honorable Judges of the District Court of the United States, Northern District of California, sitting in equity:

Raymond L. Frick, a citizen of the United States and of the State of California and a resident of the said Northern District of California, Southern Division and N. Satow, a subject of the Emperor of Japan, born in the Empire of Japan of Japanese parents and a resident of the said Northern District of California, Southern Division, bring their Bill of Complaint against U. S. Webb as Attorney General of the State of California, a citizen of the United States and of the State of California, and a resident of the Northern District of California, Southern Division and against Mathew Brady as District Attorney of the City and County of San Francisco, State of California, and also a resident of the said Northern District of California, Southern Division and show unto your Honors as follows:

I.

That plaintiffs bring this Bill of Complaint against the said U. S. Webb as the duly elected, qualified and acting Attorney General of the State of California and against Mathew Brady as the duly elected, qualified and acting District Attorney of the City and County of San Francisco, State of California.

2 II.

That the value of the matter in dispute herein between each plaintiff and the defendants is in excess of the sum of Three Thousand (\$3,000.00) Dollars exclusive of interest and costs.

III.

That this suit is a suit in equity and arises under the Constitution and Laws of the United States and under a Treaty now existing be-

tween the United States and the Empire of Japan, as will hereafter more particularly appear. That among other things, this suit is brought to repress and prevent the deprivation under the color of a certain statute of the State of California of rights and immunities secured to the complainants by the Constitution of the United States, that is, a right to have and enjoy their property without being deprived thereof without due process of law and without being *deprived thereof without due process of law and without being* denied the equal protection of the law and this suit, among other things, involves the question as to whether or not the plaintiff, Raymond L. Frick may sell and the plaintiff N. Satow may buy twenty-nine (29) shares of the Capital Stock of the Merced Farm Co., a corporation duly organized under the Laws of the State of California, said corporation being in fact the owner of, and by its articles of Incorporation authorized to acquire, possess, enjoy and convey agricultural land and whether or not said purchase and sale is contrary to the Statute of the State of California to which specific reference is hereinafter made and whether or not said statute if it prevents the said purchase and sale contemplated between plaintiffs, is contrary to the Constitution of the United States and whether or not the defendants in threatening to enforce the provisions of said statute against complaints are not depriving the plaintiff

3 Satow of rights granted to him under the terms of that certain Treaty hereinafter referred to, between the United States and the Empire of Japan.

That this suit is brought to repress and prevent the defendants, under and by virtue of the Statute of California hereinafter referred to, from illegally and unlawfully threatening complainants to the effect that they will bring proceedings to escheat said Capital Stock to the State of California if the plaintiff N. Satow should acquire the same.

IV.

That the plaintiff Raymond L. Frick is the owner of twenty eight (28) shares of the Capital Stock of the Merced Farm Co., a corporation organized and existing under the Laws of the State of California, evidenced by Certificate No. 45 and that the said plaintiff as heretofore alleged wishes to sell said stock and the whole thereof to the plaintiff N. Satow and the plaintiff N. Satow wishes to buy said stock for the sum of \$4,250.00 and that said stock is of the reasonable marked value of the said sum of \$4,250.00. That the said Merced Farm Co. is a corporation organized and existing under the Laws of the State of California and is authorized to acquire, possess, enjoy and convey agricultural land in the State of California and is now the owner of and in possession of a large amount of agricultural land to-wit: about 2,200 acres in the County of Merced, in said State of California, and that a majority of the issued capital stock of said corporation is owned by citizens of the United States.

That except for the threats and acts of the Defendants hereinafter referred to the plaintiff Raymond L. Frick would sell the said stock hereinbefore referred to, to the said plaintiff N. Satow and the said

plaintiff would buy said stock from the plaintiff Raymond L. Frick, and if the said plaintiffs are prevented from purchasing and selling the said stock as hereinbefore set forth they both and each of them will be seriously obstructed and interfered with in the management and control of his own property and property rights to the great damage of each. That both said plaintiffs are law-abiding and wish to conform in every way to all proper laws but that in view of the threatened action of the Defendants U. S. Webb, as Attorney General of the State of California, and Mathew Brady, as District Attorney of the City and County of San Francisco, State of California, the plaintiffs fear to sell and purchase the said stock and unless they are protected from the threats and acts of the Defendants under and in pursuance of the Statute hereinafter referred to and under color of which defendants are making such threats the said plaintiffs will be prevented from purchasing and selling said stock.

V.

That there was enacted by the electors of the State of California at the general election, November 2nd, 1920, an Act entitled:

An Act relating to the rights, power and disabilities of aliens and of certain companies, associations and corporations with respect to property in this State, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this Act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith.

(Submitted by the initiative and approved by electors November 2, 1920. In effect Dec. 9, 1920.)

A copy of which Act is hereto annexed, marked "Exhibit A," referred to herein and made a part hereof.

VI.

That the said Act is, in its terms, so drastic and the penalties attached to the violation of the terms thereof are so great that neither of these plaintiffs wishes to carry out said transaction of purchase and sale of said stock as hereinbefore set forth and both are deterred from carrying out said transaction even for the purpose of testing the constitutionality and validity of the said Act above mentioned or the application of said Act to such a transaction as is hereinbefore set forth, and unless this Court shall determine the validity of said Act in this proceeding and the application of said Act to said proposed transaction of purchase and sale, said Plaintiffs will be compelled to submit to said Act, whether the same be valid or invalid, applicable or in applicable and will be compelled to submit to the defendants' interpretation of said Act and will thereby be deprived of their property without due process of law and will be denied the equal protection of the law, in contravention of the Constitution of the United States and the said Treaty between

the United States and Japan and that plaintiffs have no adequate remedy at law and are relievable only in a court of equity.

VII.

That the said Act is in contravention of Section I of the Fourteenth Amendment to the Constitution of the United States in that it deprives the plaintiffs of property without due process of law and denies to them and each of them the equal protection of the law; and protection of said Section I of the Fourteenth Amendment to the Constitution of the United States is hereby specifically invoked by the plaintiffs and each of them.

VIII.

That if plaintiffs are not permitted to purchase and sell said Capital Stock as aforesaid and upon substantially the terms above mentioned a large and irreparable loss will occur to them and each of them and that plaintiffs have no adequate remedy at law and are relievable only in a Court of Equity and that the loss to each of said plaintiffs would be in excess of Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs.

IX.

That on the 22nd day of November, 1892 the President of the United States negotiated a Treaty of Commerce and Navigation between the United States of America and the Emperor of Japan, a copy of which Treaty is annexed hereto, marked "Exhibit B," referred to herein and made a part hereof; that said Treaty was signed at Washington February 21st, 1911, was ratified by the Senate with amendments February 24th, 1911, was ratified by the President March 2nd, 1922, and was ratified by Japan, March 31st, 1911; that ratifications were exchanged at Tokio April 4th, 1911; that said Treaty was proclaimed April 5th, 1911; that said Treaty has never been annulled, amended or set aside and that said Treaty is the Law of the Land and is binding on the State of California and the people thereof and must be enforced by the Courts of the United States and the Courts of the State of California; that said plaintiff N. Satow, under the terms of said Treaty and particularly Article I thereof, is entitled to protection in his right to purchase the personal property hereinbefore referred to.

X.

That in as much as plaintiffs and each of them have no adequate remedy in the premises by the strict rules of law and can obtain relief only in a court of equity where matters and things of the kind and character hereinbefore stated are perfectly cognizable and relievable, and to the end that they and each of them may have relief which they and each of them can only obtain in a court of equity, they and each of them pray:

1. That U. S. Webb, as Attorney General of the State of California and Mathew Brady as District Attorney of the City and County of San Francisco, California, be enjoined and restrained, provisionally, preliminary and perpetually by the order and injunction of this Court from bringing, directly or indirectly, any proceeding at law or in equity for the purpose of enforcing said Act of the Legislature of the State of California above mentioned
7 against these plaintiffs, or either of them, upon their entering into a transaction of purchase and sale of the Capital Stock of said corporation as hereinbefore set forth and from taking any other action in any other manner to prevent or interfere with the plaintiffs or either of them in carrying out said transaction of purchase and sale and that an order to show cause issue herein upon application of the plaintiffs herein directed to the above named defendants, requiring them to show cause why a temporary injunction should not issue as prayed for herein.

2. That upon the hearing the aforesaid Act of the State of California be declared to be unconstitutional, illegal and void and that a perpetual injunction be issued restraining the enforcement thereof as hereinabove prayed for.

3. That a writ of subpoena may issue to defendants requiring them to answer this bill of complaint fully and truthfully, but not on oath, an oath being hereby waived, and that further and general relief be granted as the nature of plaintiff's case may require or to equity may seem meet.

ALBERT H. ELLIOT AND
GUY C. CALDEN,
Solicitors for Complainants.

8 THE UNITED STATES OF AMERICA,
Northern District of California,
Southern Division, ss:

Raymond L. Frick and N. Satow, each being first duly sworn, on oath deposes and says for himself: I am one of the plaintiffs named in the foregoing Bill of Complaint; I have heard read the foregoing Bill of Complaint, know the contents thereof, and the same is true of my own knowledge; that I make this verification in behalf of my co-plaintiff as well as in my own behalf.

RAYMOND L. FRICK.
N. SATOW.

Subscribed and sworn to before me this 13 day of February, 1922.

[SEAL]

HENRIETTA HARPER,
Notary Public in and for the City and County
of San Francisco, State of California.

EXHIBIT "A."

I. *Alien Land Law.*

An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this state, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith.

Submitted by the initiative and approved by electors November 2, 1920. In effect December 9, 1920.

The people of the State of California do enact as follows:

Right of Aliens Eligible to Citizenship.

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Rights of Other Aliens.

Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Corporations.

Sec. 3. Any company, association or corporation organized under the laws of this or any other State or nation, of which a majority of the members are aliens other than those specified in section one of this act, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or any interest therein, in this state, in the manner and to
10 the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise. Hereafter all aliens other than those specified in section one hereof may become members of or acquire shares of stock in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the pur-

poses prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Appointment as Guardian.

Sec. 4. Hereafter no alien mentioned in section two hereof and no company, association or corporation mentioned in section three hereof, may be appointed guardian of that portion of the estate of a minor which consists of property which such alien or such company, association or corporation is inhibited from acquiring, possessing, enjoying or transferring by reason of the provisions of this act. The public administrator of the proper county, or any other competent person or corporation, may be appointed guardian of the estate of a minor citizen whose parents are ineligible to appointment under the provision of this section.

On such notice to the guardian as the court may require, the superior court may remove the guardian of such an estate whenever it appear to the satisfaction of the court:

(a) That the guardian has failed to file the report required by the provisions of section five hereof; or

11 (b) That the property of the ward has not been or is not being administered with due regard to the primary interest of the ward; or

(c) That facts exist which would make the guardian ineligible to appointment in the first instance; or

(d) That facts establishing any other legal ground for removal exist.

"Trustee."

Sec. 5. (a) The term "trustee" as used in this section means any person, company, association or corporation that as guardian, trustee, attorney-in-fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien mentioned in section two hereof, or to the minor child of such an alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying or transferring it.

Annual Report.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the Secretary of State of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such an alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control.

(3) An itemized account of all expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof.

12 (c) Any person, company, association or corporation that violates any Provision in this section, is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

Sale When Heir Cannot Take Real Property.

Sec. 6. Whenever it appears to the court in any probate proceeding that by reason of the provisions of this act any heir or devisee cannot take real property in this state or membership or shares of stock in a company, association or corporation which, but for said provisions, said heir or devisee would take as such, the court, instead of ordering a distribution of such property to such heir or devisee, shall order a sale of said property to be made in the manner provided by law for probate sales of property and the proceeds of such sale shall be distributed to such heir or devisee in lieu of such property.

Escheat of Property Acquired in Fee. Agricultural Land.

Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to, and become and remain the property of the State of California. The Attorney General or district attorney of the proper county shall institute proceedings to have the escheat of such real property adjudged and enforced in the manner provided by section four hundred seventy-four of the Political Code and title eight, part three of the Code of Civil Procedure. Upon the entry of final judgment in such proceedings, the title to such real property shall pass to the State of California. The provisions of this section and of sections two and three of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon, or interest in such property, so long as such real property so acquired shall remain the property of the alien, company, association or corporation acquiring the same in such manner. No alien, company, association or corporation mentioned in section two or section three hereof shall hold for a longer period than two years, the possession of any agricultural land acquired in the enforcement of

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or in satisfaction of a mortgage or other lien hereafter made or acquired in good faith to secure a debt.

Escheat of Leasehold. Escheat of Stock.

Sec. 8. Any leasehold or other interest in real property less than the fee, hereafter acquired in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to the State of California. The Attorney General or district attorney of the *property* county shall institute proceedings to have such escheat adjudged and enforced as provided in section seven of this act. In such proceedings the court shall determine and adjudge the value of such leasehold or other interest in such real property, and enter judgment for the state for the amount thereof together with costs. Thereupon the court shall order a sale of the real property covered by such leasehold, or other interest, in the manner provided by section twelve hundred seventy-one of the Code of

Civil Procedure. Out of the proceeds arising from such sale, 14 the amount of the judgment rendered for the state shall be paid into the state treasury and the balance shall be deposited with and distributed by the court in accordance with the interest of the parties therein. Any share of stock or the interest of any member in a company, association or corporation hereafter acquired in violation of the provisions of section three of this act shall escheat to the State of California. Such escheat shall be adjudged and enforced in the same manner as provided in this section for the escheat of a leasehold or other interest in real property less than the fee.

Conveyance to Prevent Escheat.

Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following groups of facts:

(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien in section two hereof;

(b) The taking of the property in the name of a company, association or corporation, if the memberships or shares of stock therein held by aliens mentioned in section two hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a ma-

15 jority of the membership or the issued capital stock of such company, association or corporation;

(c) The execution of a mortgage in favor of an alien mentioned in section two hereof if said mortgage is given possession, control or management of the property.

The enumeration in this section of certain presumptions shall not be so construed as to preclude other presemptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein.

Penalty for Conspiracy to Effect Illegal Transfer.

Sec. 10. If two or more persons conspire to effect a transfer of real property, or of an interest therein, in violation of the provisions hereof, they are punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand dollars, or both.

Sec. 11. Nothing in this act shall be construed as a limitation upon the power of the state to enact laws with respect to the acquisition, holding or disposal by aliens of real property in this state.

Repealed Provisos.

Sec. 12. All acts and parts of acts inconsistent or in conflict with the provisions hereof are hereby repealed; provided, that—

(a) This act shall not effect pending actions or proceedings, but the same may be prosecuted and defended with the same effect as if this act had not been adopted;

(b) No cause of action arising under any law of this state shall be affected by reason of the adoption of this act whether an action or proceeding has been instituted thereon at the time of the taking effect of this act or not and actions may be brought upon such
16 causes in the same manner, under the same terms and conditions, and with the same effect as if this act had not been adopted;

(c) This act in so far as it does not add to, take from or alter an existing law shall be construed as a continuation thereof.

Amendment.

Sec. 13. The legislature may amend this act in furtherance of its purpose and to facilitate its operation.

Constitutionality.

Sec. 14. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The

people hereby declare that they would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, sub-sections, sentences, clauses or phrases be declared unconstitutional.

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EXHIBIT B.

JAPAN, 1911.

Commerce and Navigation. Superseding the Treaty of November 22nd, 1894.

Signed at Washington February 21, 1911; ratification advised by the Senate, with amendment, February 24, 1911; ratified by the President March 2, 1911; ratified by Japan March 31, 1911; ratification exchanged at Tokyo April 4, 1911; proclaimed April 5, 1911.

Articles.

I. Mutual freedom of trade, travel, etc.; taxes and exemptions from military service.

II. Inviolability of dwellings, etc.

III. Consular officers.

IV. Reciprocal freedom of commerce and navigation.

V. Import and export duties.

VI. Transit dues.

VII. Corporations.

VIII. Equality of shipping.

IX. Privileges respecting stationing, loading, etc., vessels.

X. Nationality of vessels.

XI. Tonnage, etc., dues.

XII. Vessels in postal service.

XIII. Coasting trade.

XIV. Favored-nation privilege.

XV. Patents, trade-marks, and designs.

XVI. Treaty of 1894 superseded.

XVII. Effect; duration.

XVIII. Ratification.

The President of the United States of America and His Majesty the Emperor of Japan, being desirous to strengthen the relations of amity and good understanding which happily exist between the two nations, and believing that the fixation in a manner clear and positive of the rules which are hereafter to govern the commercial intercourse between their respective countries will contribute to the realization of this most desirable result, have resolved to conclude a Treaty of Commerce and Navigation for that purpose, and to that end have named their Plenipotentiaries, that is to say: The President of the United States of America, Philander C. Knox, Secretary of State of the United States; and

His Majesty the Emperor of Japan, Baron Yasuya Uchida, Jusammi, Grand Lord of the Imperial Order of the Rising Sun, His Majesty's Ambassador Extraordinary and Plenipotentiary to the United States of America.

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed upon the following articles:

Article I.

The citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.

They shall not be compelled, under any pretext whatever, to pay any charges or taxes other or higher than those that are or may be paid by native citizens or subjects. The citizens or subjects of each of the High Contracting Parties shall receive, in the territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or may be granted to native citizens or subjects, on their submitting themselves to the conditions imposed upon the native citizens or subjects.

They shall, however, be exempt in the territories of the other from compulsory military service either on land or sea, in the regular forces, or in the national guard, or in the militia; from all contributions imposed in lieu of personal service, and from all forced loans or military exactions or contributions.

Article II.

The dwellings, warehouses, manufactories and shops of the citizens or subjects of each of the High Contracting Parties in the territories of the other, and all premises appertaining thereto used for purposes of residence or commerce, shall be respected. It shall not be allowable to proceed to make a domiciliary visit to, or a search of, any

such buildings and premises, or to examine or inspect books, papers or accounts, except under the conditions and with the forms prescribed by the laws, ordinances and regulations for nationals.

Article III.

Each of the High Contracting Parties may appoint Consuls General, Consuls, Vice Consuls, Deputy Consuls and Consular Agents in all ports, cities and places of the other, except in those where it may not be convenient to recognize such officers. This exception, however, shall not be made in regard to one of the Contracting Parties without being made likewise in regard to all other Powers.

Such Consuls General, Consuls, Vice Consuls, Deputy Consuls and Consular Agents, having received exequaturs or other
20 sufficient authorizations from the Government of the country to which they are appointed, shall, on condition of reciprocity, have the right to exercise the functions and to enjoy the exemptions and immunities which are or may hereafter be granted to the consular officers of the same rank of the most favored nation. The Government issuing exequaturs or other authorizations may in its discretion cancel the same on communicating the reasons for which it thought proper to do so.

Article IV.

There shall be between the territories of the Two High Contracting Parties reciprocal freedom of commerce and navigation. The Citizens or Subjects of each of the Contracting Parties, equally with the citizens or subjects of the most favored nation, shall have liberty freely to come with their ships and cargoes to all places, ports and rivers in the territories of the other which are or may be opened to foreign commerce, subject always to the laws of the country to which they thus come.

Article V.

The import duties on articles, the produce or manufacture of the territories of one of the High Contracting Parties, upon importation into the territories of the other, shall henceforth be regulated either by treaty between the two countries or by the internal legislation of each.

Neither Contracting Party shall impose any other or higher duties or charges on the exportation of any articles to the territories of the other than are or may be payable on the exportation of the like article to any other foreign country. Nor shall any prohibition be imposed by either country on the importation or exportation of any

article from or to the territories of the other which shall not
21 equally extend to the like article imported from or exported to any other country. The last provision is not, however, applicable to prohibitions or restrictions maintained or imposed as sanitary measures or for purposes of protecting animals and useful plants.

Article VI.

The citizens or subjects of each of the High Contracting Parties shall enjoy in the territories of the other exemption from all transit duties and a perfect equality of treatment with native citizens or subjects in all that relates to warehousing, bounties, facilities and drawbacks.

Article VII.

Limited-liability and other companies and associations, commercial industrial, and financial, already or hereafter to be organized in accordance with the laws of either High Contracting Party and domiciled in the territories of such Party, are authorized, in the territories of the other, to exercise their rights and appear in the courts either as plaintiffs or defendants, subject to the laws of such other Party.

The foregoing stipulation has no bearing upon the question whether a company or association organized in one of the two countries will or will not be permitted to transact its business or industry in the other, this permission remaining always subject to the laws and regulations enacted or established in the respective countries or in any part thereof.

Article VIII.

All articles which are or may be legally imported into the ports of either High Contracting Party from foreign countries in national vessels may likewise be imported into those ports in vessels of the other Contracting Party, without being liable to any other or higher duties or charges of whatever denomination than if such articles were imported in national vessels. Such reciprocal equality
22 of treatment shall take effect without distinction, whether such articles come directly from the place of origin or from any other foreign place.

In the same manner, there shall be perfect equality of treatment in regard to exportation, so that the same export duties shall be paid, and the same bounties and drawbacks allowed, in the territories of each of the Contracting Parties on the exportation of any article which is or may be legally exported therefrom, whether such exportation shall take place in vessels of the United States or in Japanese vessels, and whatever may be the place of destination, whether a port of the other Party or of any third Power.

Article IX.

In all that regards the stationing, loading and unloading of vessels in the ports of the territories of the High Contracting Parties, no privileges shall be granted by either Party to National vessels which are not equally, in all cases, granted to the vessels of the other country; the intention of the Contracting Parties being that in these

respects the respective vessels shall be treated on the footing of perfect equality.

Article X.

Merchant vessels *navigation* under the flag of the United States or that of Japan and carrying the papers required by their national laws to prove their nationality shall in Japan and in the United States be deemed to be vessels of the United States or of Japan respectively.

Article XI.

No duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties of whatever denomination, levied in the name or for the profit of Government, public functionaries, private individuals, corporation or establishments of any kind shall be imposed in the ports of the territories of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels in general, or on vessels of the most favored nation. Such equality of treatment shall apply reciprocally to the respective vessels from whatever place they may arrive and whatever may be their place of destination.

Article XII.

Vessels charged with performance of regular scheduled postal service of one of the High Contracting Parties, whether belonging to the State or subsidized by it for the purpose, shall enjoy, in the ports of the territories of the other, the same facilities, privileges and immunities as are granted to like vessels of the most favored nation.

Article XIII.

The coasting trade of the High Contracting Parties is excepted from the provisions of the present Treaty and shall be regulated according to the laws of the United States and Japan, respectively. It is, however, understood that the citizens or subjects of either Contracting Party shall enjoy in this respect most-favored-nation treatment in the territories of the other.

A vessel of one of the Contracting Parties, laden in a foreign country with cargo destined for two or more ports of entry in the territories of the other, may discharge a portion of her cargo at one of the said ports, and, continuing her voyage to the other port or ports of destination, there discharge the remainder of her cargo, subject always to the laws, tariffs and customs regulations of the country of destination; and, in like manner and under the same reservations, the vessels of one of the Contracting Parties shall be permitted to load at several ports of the other for the same outward voyages.

Article XIV.

Except as otherwise expressly provided in this Treaty, the High Contracting Parties agree that, in all that concerns commerce and navigation, any privilege, favor or immunity which either

24 Contracting Party has actually granted, or may hereafter grant, to the citizens or subjects of any other State shall be extended to the citizens or subjects of the other Contracting Party gratuitously, if the concession in favor of that other State shall have been gratuitous, and on the same or equivalent conditions, if the concession shall have been conditional.

Article XV.

The citizens or subjects of each of the High Contracting Parties shall enjoy in the territories of the other the same protection as native citizens or subjects in regard to patents, trade-marks and designs, upon fulfillment of the formalities prescribed by law.

Article XVI.

The present Treaty shall, from the date on which it enters into operation, supersede the Treaty of Commerce and Navigation dated the 22nd day of November, 1894; and from the same date the last named Treaty shall cease to be binding.

Article XVII.

The present Treaty shall enter into operation on the 17th day of July, 1911, and shall remain in force twelve years or until the expiration of six months from the date on which either of the Contracting Parties shall have given notice to the other of its intention to terminate the Treaty.

In case neither of the Contracting Parties shall have given notice to the other six months before the expiration of the said period of twelve years of its intention to terminate the Treaty, it shall continue operative until the expiration of six months from the date on which either Party shall have given such notice.

Article XVIII.

The present Treaty shall be ratified and the ratification thereof shall be exchanged at Tokyo as soon as possible and not later

25 than three months from the present date. In witness whereof, the respective Plenipotentiaries have signed this Treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 21st day of February, in the nineteen hundred and eleventh year of the Christian era, corresponding to the 21st day of the 2nd month of the 44th year of Meiji.

PHILANDER C. KNOX. [SEAL.]
Y. UCHIDA. [SEAL.]

And, whereas, the advice and consent of the Senate of the United States to the ratification of the said Treaty was given, with the understanding "That the treaty shall not be deemed to repeal or affect any of the provisions of the Act of Congress entitled 'An Act to Regulate the Immigration of Aliens into the United States,' approved February 20th, 1907";

And, whereas, the said understanding has been accepted by the Government of Japan;

And, whereas, the said Treaty, as amended by the Senate of the United States, has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the City of Tokyo, on the fourth day of April, one Thousand nine hundred and eleven;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Treaty, as amended, and the said understanding to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fifth day of April in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States of America the one hundred
26 and thirty-fifth.

[SEAL.]

WM. H. TAFT.

By the President:

P. C. KNOX,

Secretary of State.

Declaration.

In proceeding this day to the signature of the Treaty of Commerce and Navigation between Japan and the United States the undersigned, Japanese Ambassador in Washington, duly authorized by his Government has the honor to declare that the Imperial Japanese Government are fully prepared to maintain with equal effectiveness the limitation and control which they have for the past three years exercised in regulation of the emigration of laborers to the United States.

February 21, 1911.

Y. UCHIDA.

By the President of the United States of America.

A Proclamation.

Whereas a Protocol of a provisional tariff arrangement between the United States of America and the Empire of Japan was concluded and signed by their respective Plenipotentiaries at Washington, on

the twenty-first day of February, one thousand nine hundred and eleven, the original of which Protocol, being in the English language is, as amended by the Senate of the United States, word for word as follows:

Protocol.

27 The Government of the United States of America and the Government of Japan have, through their respective Plenipotentiaries, agreed upon the following stipulation in regard to Article V of the Treaty of Commerce and Navigation between the United States and Japan signed this day to replace on the 17th of July, 1911, the Treaty of the 22nd of November, 1894:

Pending the conclusion of a treaty relating to tariff, the provisions relating to tariff in the Treaty of the 22nd of November, 1894 shall be maintained.

In witness whereof, the respective Plenipotentiaries have signed this Protocol in duplicate and have hereunto affixed their seals.

Done at Washington the 21st day of February, in the nineteen hundred and eleventh year of the Christian era, corresponding to the 21st day of the 2nd month of the 44th year of Meiji.

[SEAL.]
[SEAL.]

PHILANDER C. KNOX.
Y. UCHIDA.

And, whereas, the said Protocol, as amended by the Senate of the United States, has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Tokyo, on the fourth day of April, one thousand nine hundred eleven;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Protocol to be made public, to the end that the same and every article and clause thereof, as amended, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fifth day of April in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States of America the one hundred and thirty-fifth.

[SEAL.]

WM. HOWARD TAFT.

By the President:
P. C. KNOX,
Secretary of State.

Endorsed: Filed Feby. 27, 1922. Walter B. Maling, Clerk.

28

(Title of Court and Cause.)

Motion for Temporary Injunction.

Come now the above named plaintiffs and upon their verified bill of complaint herein, move the Court for a temporary injunction restraining the above named U. S. Webb as Attorney General of the State of California, and Mathew Brady as District Attorney of the City and County of San Francisco, State of California, during the pendency of the above entitled action from bringing, directly or indirectly, and from permitting to be brought, directly or indirectly, any proceeding at law or in equity for the purpose of enforcing the Act of the State of California entitled "An Act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this state, providing for escheats in certain cases. Prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this Act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith," against these plaintiffs or either of them upon their executing or attempting to execute the transaction of purchase and sale described in the bill of complaint herein, and from taking any other action in any other manner to prevent or interfere with the plaintiffs or either of them from entering into a contract of purchase and sale substantially in the form as described in the bill of complaint herein; and from prosecuting or threatening to prosecute any action under the said Statute of California for escheat of any stock so purchased and sold as aforesaid.

ALBERT H. ELLIOTT AND
GUY C. CALDEN,
Solicitors for Plaintiffs.

Endorsed: Filed Feb'y 27, 1922. Walter B. Maling, Clerk.

29

(Title of Court and Cause.)

(Order That the Application for Temporary Injunction be Heard.)

The Court having considered the verified Bill of Complaint duly filed in the above entitled suit, and the motion of the plaintiffs for a temporary injunction therein, and it appearing to the Court that the suit is one requiring the presence at the hearing of the application for a temporary injunction of three judges, one of whom shall be a Circuit Judge of the United States.

It is by the Court ordered that the application for such temporary injunction be heard on the 13 day of March 1922 at ten o'clock in the forenoon, in the United States District Court at the court house thereof in the City and County of San Francisco, State of California.

M. T. DOOLING,
United States District Judge.

Endorsed: Filed Feb'y 27, 1922. Walter B. Maling, Clerk.

(Title of Court and Cause.)

Memorandum of Opinion.

Before Hon. Wm. W. Morrow, Circuit Judge, and Hon. Wm. H. Sawtelle and Hon. M. T. Dooling, District Judges.

Albert H. Elliott, Esq., and Guy C. Calden, Esq., solicitors for plaintiffs.

U. S. Webb, Esq., Attorney General of the State of California and Frank English, Esq., Deputy Attorney General of the State of California, Attorneys for defendant, U. S. Webb.

SAWTELLE, D. J.:

It is the unanimous opinion of this court that the plaintiffs herein are not entitled to injunctive relief and that their application for a temporary injunction should be denied; that the California Statute here involved violates no provision of the Constitution of the United States, nor does it conflict with any provision or stipulation of the Treaty between Japan and the United States.

We are entirely satisfied with the decision of the court in the recent cases of Terrance vs. Thompson, 274 Fed. 341, Porterfield and Mizuno vs. Webb, Attorney General, et al., and O'Brien and J. Inouye vs. Webb, Attorney General et al., and believe the opinion in each of those cases is sound law and correctly interprets those provisions of the Constitution and Treaty here involved.

Plaintiffs's application for a temporary injunction will be denied and an order will be entered accordingly.

Morrow, Circuit Judge and Dooling, D. J. concur.

Endorsed: Filed May 23, 1922. W. B. Maling, Clerk, By J. A. Schaertzer, Deputy Clerk.

(Title of Court and Cause.)

Memorandum.

Albert H. Elliot and Guy C. Calden, Attorneys for Plaintiffs.

U. S. Webb, Attorney General of California, and Frank English, Deputy Attorney General of California, Attorneys for Defendants.

Before Morrow, Circuit Judge, and Dooling and Sawtelle, District Judges.

MORROW, C. J.:

The California Alien Land Law of 1920, (Statutes of California, 1921), provides in section 2:

"All aliens other than those mentioned in Section 1 of this act (that is to say, all aliens ineligible to citizenship) may acquire, possess, enjoy, and transfer real property, or any interest therein, in

this state, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise."

It is alleged in the complaint that Satow is a subject of the Emperor of Japan, born in the Empire of Japan, of Japanese parents, and is also a resident of California. Satow is an alien, and he is ineligible to citizenship under the laws of the United States. He is therefore one of the aliens who may not acquire, possess, enjoy, and transfer real property or any interest therein, in this state, unless it is so provided in the treaty between this country and Japan. Our attention has not been called to any provision in the treaty between this country and Japan providing that such an alien may acquire, possess, enjoy, and transfer real property or any interest therein in this state, other than to lease land for residential or commercial purposes.

32 The remaining material question is: "Is the ownership of 28 shares of the capital stock of the Merced Farm Company, a corporation organized under the laws of the State of California for agricultural purposes, such an interest in real property as to bring him within the prohibitory provisions of this act?"

It is alleged that said Merced Farm Company is a domestic corporation, authorized by its articles of incorporation to acquire, possess, enjoy, and convey agricultural land, and that the corporation is in fact the owner of approximately 2,200 acres of agricultural land situated in the county of Merced in this state. The land is not for leasing for residential or commercial purposes. We think the ownership of stock in such a corporation would be an interest in real property which would bring the alien owner of such stock (who is ineligible to citizenship) within the prohibitory provisions of the act, and that under section 2 of the act the Attorney General is authorized by sections 7 and 8 of the act to institute proceedings to have the escheat of such interest in real property in the manner provided by section 474 of the Code of Civil Procedure of this state, and that such proceedings would not be in violation of the treaty between the United States and Japan or the Fourteenth Amendment of the Constitution of the United States.

Dated May 23, 1922.

Endorsed: Filed May 23, 1922, W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

- 33 At a stated term, to-wit: the March term A. D. 1922 of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the Court Room in the City and County of San Francisco on Tuesday the 23rd day of May in the year of our Lord one thousand nine hundred and twenty-two.

Present:

The Honorable William W. Morrow, Circuit Judge.
 The Honorable Maurice T. Dooling, District Judge.
 The Honorable William H. Sawtelle, District Judge, for the District of Arizona, designated to hold and holding this Court.

No. 694. Equity.

RAYMOND L. FRICK AND N. SATOW

vs.

U. S. WEBB, as Attorney General etc., et al.

(Order Denying Application for Injunction Pendente Lite.)

The plaintiffs' application for an injunction pendente lite heretofore heard and submitted, being now fully considered, and the Court having rendered its opinion orally, it is ordered that the said application for an injunction pendente lite be and the same is hereby denied.

34

(Title of Court and Cause.)

Petition for Appeal.

Now come Raymond L. Frick and N. Satow, by Louis Marshall, their attorney, and say that this action was brought in the District Court of the United States in and for the Northern District of California, Southern Division, at San Francisco, for the purpose of enjoining the defendants, who are, respectively, the Attorney-General of the State of California and the District Attorney of the City and County of San Francisco, in the State of California, from enforcing the so-called California Anti-Alien Land Law, adopted by initiative November 2, 1920, on the ground of its unconstitutionality.

An application was made for an interlocutory injunction restraining the enforcement of said statute before Honorable William W. Morrow, Circuit Judge, and Honorable William H. Sawtelle and Honorable M. T. Dooling, District Judges. On the 23rd day of May, 1922, a decision was rendered denying your petitioners' application for the interlocutory injunction as prayed for. They contend that in denying the said application for an injunction certain errors were committed to their prejudice, all of which will in more detail appear from the Assignments of Error filed with this petition.

Wherefore your petitioners pray, pursuant to Section 266 of the Judicial Code, that they be allowed to appeal to the Supreme Court of the United States for the correction of the errors and a reversal of the order and decision so complained of; that a transcript of the record, proceedings and orders in this cause, duly authenticated, be sent to the Supreme Court of the United States; that the amount of the security which the petitioners shall give and furnish on said appeal may be fixed, and that upon the giving of such security all further proceedings in the District Court of the United States in and for the Northern District of California, Southern Division, at San Francisco, be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

Dated, June 30, 1922.

RAYMOND L. FRICK,
N. SATOW,
Petitioners,
By LOUIS MARSHALL,
Their Attorney and Counsel.

(Title of Court and Cause.)

The undersigned hereby admit due, timely and proper service of the annexed Petition for Appeal, Allowance of Appeal, Assignments of Error, Bond on Appeal and Citation, in the above entitled action.

Dated, July 7th, 1922.

U. S. WEBB,
Attorney General;
FRANK ENGLISH,
Deputy Attorney General,
Attorneys for Defendant U. S. Webb.
MATTHEW BRADY,
Attorney for Defendant Matthew
Brady, District Attorney, etc.

Endorsed: Filed July 8, 1922. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

(Title of Court and Cause.)

Assignments of Error.

Now come Raymond L. Frick and N. Satow, appellants in the above entitled cause, by Louis Marshall, their attorney, and say that in the record and proceedings in this cause there is manifest error in this, to wit:

First. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in adjudging that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, is a constitutional act.

Second. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in adjudging that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, did not deprive the appellant Frick of his liberty without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Third. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in adjudging that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, did not deny the appellant Frick of his property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Fourth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in adjudging that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, did not deny the appellant Frick the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Fifth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in adjudging that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, did not deprive the appellant Satow of the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Sixth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in adjudging that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, did not deprive the appellant Satow of the liberty of pursuit of a lawful occupation, to wit, the purchase of shares of stock in a California corporation authorized to acquire, possess, enjoy and convey agricultural lands and which was in fact the owner of such lands, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Seventh. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in adjudging that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, did not deprive the appellant Satow, who is a subject of the Empire of Japan, of the rights, privileges and immunities secured to him under the treaty between the United States of America and the Empire of Japan.

Eighth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in adjudging that the Fourteenth Amendment to the Constitution of the United States did not give to the appellant Frick, who is a citizen of the United States, the right to sell shares of stock owned by him in a California corporation, which had the title

to agricultural lands in said state and which was authorized to acquire, possess, enjoy and convey such lands, to the appellant Satow, who is an alien of the Japanese race and not a free white person or of African nativity or of African descent.

Ninth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in adjudging that the Fourteenth Amendment to the Constitution of the United States did not give the appellant Satow, who is an alien of the Japanese race and not a free white person and not of African nativity or of African descent, the right to acquire, possess and enjoy shares of stock in a California corporation, which had the title to agricultural lands in said state and which was authorized by its charter to acquire, possess, enjoy and convey such lands.

Tenth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in refusing to decide that the so-called California Alien land Act, adopted by initiative on November 2, 1920, is unconstitutional and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it discriminated against the appellant Satow on the ground of color, race and nationality.

Eleventh. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in refusing to decide that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, is an unconstitutional act.

Twelfth. In that the District Court of the United States in and for the Northern District of California, Southern Division, 39 erred in refusing to decide that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, deprived the appellant Frick of his liberty without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Thirteenth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in refusing to decide that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, denied the appellant Frick of his property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Fourteenth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in refusing to decide that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, denied the appellant Frick the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Fifteenth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in refusing to decide that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, deprived the appellant Satow of the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Sixteenth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in refusing to decide that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, deprived the ap-
40 pellant Satow of the liberty of pursuit of a lawful occupation, to-wit, that of purchasing shares of stock in a California corporation, authorized under its charter to acquire, possess, enjoy and convey agricultural lands, and which was in fact the owner of such lands, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Seventeenth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in refusing to decide that the so-called California Alien Land Act, adopted by initiative on November 2, 1920, deprived the appellant Satow, who is a subject of the Empire of Japan, of the rights, privileges and immunities secured to him under the treaty between the United States of America and the Empire of Japan.

Eighteenth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in refusing to decide that the Fourteenth Amendment to the Constitution of the United States gave to the appellant Frick, who is a citizen of the United States, the right to sell shares of stock owned by him in a California corporation, which had the title to agricultural lands in said state and which was authorized to acquire, possess, enjoy and convey such lands, to the appellant Satow, who is an alien of the Japanese race and not a free white person or of African nativity or of African descent.

Nineteenth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in refusing to decide that the Fourteenth Amendment to the Constitution of the United States gave to the appellant Satow, who is an alien of the Japanese race and not a free white person and not of African nativity or of African descent, the right to acquire, possess and enjoy the ownership of shares of the capital stock of a California corporation owning agricultural lands, although such
41 corporation was authorized by its charter to acquire, possess, enjoy and convey such lands.

Twentieth. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in holding that the ownership of shares of the capital stock of a California corporation owning and authorized to acquire, possess, enjoy and convey agricultural lands in said state, constitutes the ownership of an interest in real property in said state.

Twenty-first. In that the District Court of the United States in and for the Northern District of California, Southern Division, erred in holding that the appellant Satow, who is a subject of the Empire of Japan, is not entitled under the terms of the treaty of 1911 between the United States of America and the Empire of Japan to acquire the ownership of shares of the capital stock of a California corporation owning and authorized to acquire, possess, enjoy and convey agricultural lands in said state.

Wherefore, for these and other manifest errors appearing in the record, Raymond L. Frick and N. Satow, the appellants, pray that the order rendered by the District Court of the United States in and for the Northern District of California, Southern Division, at San Francisco, denying the application for a preliminary injunction made by the appellants, be reversed and set aside and held for naught, and that judgment be rendered for the appellants herein granting them their rights under the laws and Constitution of the United States of America and the treaty between the United States of America and the Empire of Japan, and particularly judgment for the relief demanded in their bill of complaint in this cause.

LOUIS MARSHALL,
Attorney for Appellants.

Endorsed: Filed July 8, 1922, W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

42

(Title of Court and Cause.)

Allowance of Appeal.

Now come Raymond L. Frick and N. Satow, appellants above named, on this 1st day of July, 1922, and file and present their petition praying for the allowance of an appeal intended to be urged by them, and praying further that a duly authenticated transcript of the record, proceedings and papers upon which the judgment herein was rendered may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had in the premises as may be just and proper.

And it appearing upon a consideration of such petition that in this action there has been drawn in question the validity of a statute of and authority exercised under the State of California on the ground of their being repugnant to the Constitution of the United States, and that a decision rendered by the District Court of the United States in and for the Northern District of California, Southern Division, at San Francisco, upon application for an injunction pursuant to Section 266 of the Judicial Code was in favor of the validity of a statute and of an authority exercised under the State of California.

It is ordered that the said appeal to the Supreme Court of the United States from the order denying the interlocutory injunction prayed for by the petitioners be allowed as prayed; provided, however, that Raymond L. Frick and N. Satow, the petitioners, give

bond according to law in the sum of Two hundred and fifty Dollars (\$250), which said bond shall operate as a supersedeas bond.

In testimony whereof, witness my hand this 1st day of July, 1922.

JOSEPH McKENNA,
*Associate Justice of the Supreme Court
of the United States.*

Endorsed: Filed July 8, 1922, W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

44

(Title of Court and Cause.)

Bond on Appeal.

Know all men by these presents, that we, Raymond L. Frick and N. Satow, appellants, as principals, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto U. S. Webb, as Attorney-General of the State of California, and Matthew Brady, as District Attorney of the City and County of San Francisco, State of California, in the full sum of Two Hundred and fifty Dollars (\$250), to be paid to the said U. S. Webb and Matthew Brady, and for the payment of which well and truly to be made we bind ourselves and each of us and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 30th day of June, 1922.

Whereas the above named Raymond L. Frick and N. Satow, appellants, seek to prosecute their appeal in the Supreme Court of the United States to reverse the order denying the appellants' application for an interlocutory injunction in the action entitled Raymond L. Frick and N. Satow against U. S. Webb, as Attorney-General of the State of California, and Matthew Brady, as District Attorney of the City and County of San Francisco, State of California, rendered by the District Court of the United States in and for the Northern District of California, Southern Division, at San Francisco, on the 28rd day of May, 1922.

Now, therefore, the condition of the above obligation is such that if the above named appellants shall prosecute their appeal to effect and shall answer all costs and damages that may be adjudged if they shall fail to make good their plea, then this obligation is to be
45 void, otherwise to remain in full force and virtue.

RAYMOND L. FRICK, [SEAL.]
N. SATOW, [SEAL.]

By LOUIS MARSHALL,
Their Attorney and Counsel.

[SEAL.]

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND,

By ERNEST L. HICKS,
Attorney-in-fact,

Attest:

FRANCES A. MASSEY,
Attorney-in-fact.

This bond is approved this 1st day of July, 1922.

JOSEPH McKENNA,
*Associate Justice of the
Supreme Court of the United States.*

46 STATE OF NEW YORK,
 County of New York, ss:

On the 30th day of June, in the year 1922, before me personally came Ernest L. Hicks, to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York; that he is the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, the corporation described in, and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the Fidelity and Deposit Company of Maryland has been duly authorized to transact business in the State of New York, in pursuance of the statutes in such case made and provided; and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided in Section 183, of the Insurance Law, constituting Chapter 33 of the Consolidated Laws of the State of New York. And the said Ernest L. Hicks further said that he is acquainted with Frances A. Massey and knew him to be the Attorney-in-Fact of said Company; that the signature of the said Frances A. Massey subscribed to the within instrument, was in the genuine handwriting of the said Frances A. Massey and was subscribed thereto by like order of the Board of Directors, and in the presence of him, the said Ernest L. Hicks.

CHARLES M. CLARK, [SEAL.]
Notary Public, New York County.

Notary Public, Kings County, No. 55.
Kings County Register's No. 4055.
Certificate filed in New York County No. 263.
New York County Register's No. 4260.
Commission expires March 30, 1924.

At a regular meeting of the Executive Committee of the Board of Directors of the Fidelity and Deposit Company of Maryland, held in its office in the City of Baltimore, State of Maryland, on
47 the 23rd day of March, 1922, the following resolution was
 unanimously adopted:

"Resolved, That Franklin D. Roosevelt, Hugh M. Allwood, Ernest L. Hicks, James P. Farrel, Frank A. Eickhoff, Vincent Cullen, John A. Griffin, Frances A. Massey, John W. Whitbeck, Thomas E. White, Raymond C. Laib, A. T. W. MacCormick, William A. Bullock, Roy M. Anderson, Wallace P. Harvey, Albert L. Carr, Louis C. Field, Helen Petersen, George E. Baer, Garrett B. Carman, George Johnson, Jeane Cheyne, Floyd G. Whitney, Manley S. Inscho, James F. O'Hea

and Thomas P. Cummins, all of the City of New York, State of New York, be and each of them is hereby appointed Attorney-in-fact of this Company and empowered to execute and deliver and attach the seal of the Company to any and all bonds or undertakings for or on behalf of this Company. Such bonds or undertakings to be executed for the Company by any one of the Attorneys-in-fact aforesaid, and to be attested in every instance by one other of the said Attorneys-in-fact, as occasion may require.

"This power of attorney revokes that of January 17th, 1922, in behalf of Franklin D. Roosevelt, et al."

I, Frances A. Massey, Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, have compared the foregoing Resolution with the original thereof, as recorded in the Minute Book of said Company and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original Resolution. Given under my hand and the seal of the Company, at the City of New York, this 30th day of June 1922.

[SEAL.]

FRANCES A. MASSEY,
Attorney-in-Fact.

48 Fidelity and Deposit Company of Maryland.

Statement December 31, 1921.

Assets.

Home Office Building and Annex	\$2,350,000.00
Other Real Estate	36,707.42
Bonds and Stocks, (Insurance Department valuations)	7,647,446.86
First Mortgage Loans, etc.	282,221.14
Unpaid Premiums, (subsequent to Oct. 1, 1921) ...	1,712,011.86
Unpaid Premiums, (prior to Oct. 1, 1921)	478,692.15
Bank Deposits for use of Branch Offices, etc.	53,653.18
Cash in Banks and Trust Companies	1,109,967.13

Total Assets 13,670,699.74

Unpaid Premiums, (prior to Oct. 1, 1921) (Deducted according to rulings and regulations of various Insurance Departments)	478,692.15
---	------------

Total Assets (on basis of statement to Insurance Departments) 13,192,007.59

Liabilities.

Reserve for Unearned Premiums	\$4,085,179.39
Reserve for Claims	2,197,564.44
Reserve for Advance Premiums and Return Premiums	240,619.21
Reserve for Commissions (Unpaid Premiums sub- sequent to Oct. 1, 1921)	240,932.71
Reserve for Taxes, and Expenses in Transit	431,474.41
Reserves, Special and Contingent	72,748.41
Reserve for Unpaid Reinsurance Premiums	507,661.82
Total Reserves	7,776,180.39

Capital Stock, paid up \$3,000,000.00

49

Surplus and Un-
divided Profits ... \$2,894,519.35

Less unpaid Premi-
ums, (prior to Oct,
1, 1921) Deducted
according to Insur-
ance Department
Regulations. (See
above) 478,692.15

Surplus and Undivided Profits (on
basis of statement to Insurance De-
partments 2,415,827.20

Surplus to Policy Holders 5,415,827.20

13,192,007.59

STATE OF NEW YORK,
County of New York, ss:

Frances A. Massey being duly sworn, says that he is the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, that the foregoing is a true and correct statement of the financial condition of the said Company, as of December 31, 1921, to the best of his knowledge and belief, and that the financial condition of said Company is as favorable now as it was when such statement was made.

FRANCES A. MASSEY.

Subscribed and sworn to before me, this 30th day of June 1922.

[SEAL.]

CHARLES M. CLARK,

Notary Public, New York County.

Notary Public, Kings County No. 55.

Kings County Register's No. 4055.

Certificate filed in New York County No. 263.

New York County Register's No. 4260.

Commission Expires March 30, 1924.

Endorsed: Filed July 8, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

50

(Title of Court and Cause.)

(Præcipe for Record on Appeal.)

To the Clerk of the District Court of the United States in and for
The Northern District of California, Southern Division, at San
Francisco:

Please issue a certified copy of the records in the above entitled
proceeding, consisting of the following papers:

1. Plaintiffs' bill of complaint.
2. Plaintiffs' motion for temporary injunction.
3. Order of Hon. Maurice T. Dooling that the application for
temporary injunction be heard.
4. Opinion of the Court on denial of motion for temporary in-
junction.
5. Order entered on such denial.
6. Petition for Appeal.
7. Allowance of Appeal.
8. Assignments of Error.
9. Bond on Appeal.
10. Citation on Appeal.
11. Præcipe for Transcript of Record.

Said record is to be certified under the hand of the Clerk and the
seal of the Court.

Dated, July 1st, 1922.

LOUIS MARSHALL,
Attorney for Plaintiffs and Appellants.

Receipt of a copy of the foregoing Præcipe is hereby admitted this
7th day of July, 1922, and it is hereby stipulated and agreed that
the papers mentioned and described therein are all the papers
necessary to a determination by the Supreme Court of the United

51 States of the appeal prosecuted by said appellants, and that
such record shall constitute the transcript of record on appeal
from the order appealed from, and that said appeal may be
heard and determined upon such transcript of record.

U. S. WEBB, *Attorney General*;
FRANK ENGLISH,
Deputy Attorney General,
Attorneys for Defendant U. S. Webb.
MATTHEW BRADY,
Attorney for Defendant Matthew
Brady, District Attorney, etc.

Endorsed: Filed July 8, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

52

(Title of Court and Cause.)

Clerk's Certificate to Record on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing fifty-one (51) pages, numbered from 1 to 51, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the præcipe for record on appeal, as the same remain on file and of record in the above-entitled cause, in the office of the clerk of said Court, and that the same constitute the record on appeal to the Supreme Court of the United States.

I further certify that the cost of the foregoing transcript of record is \$22.55; that said amount was paid by the plaintiffs, and that the original citation on appeal issued in said cause is hereto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court this 18th day of July, A. D. 1922.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
*Clerk United States District Court for
the Northern District of California.*

53

Citation.

UNITED STATES OF AMERICA, ss:

To U. S. Webb, as Attorney-General of the State of California, and Matthew Brady, as District Attorney of the City and County of San Francisco, State of California, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal filed in the District Court of the United States in and for the Northern District of California, Southern Division, at San Francisco, wherein Raymond L. Frick and N. Satow are appellants and you the said U. S. Webb, as Attorney-General of the State of California, and Matthew Brady, as District Attorney of the City and County of San Francisco, State of California, are appellees, to show cause, if any there be, why the order denying the appellants' application for an interlocutory injunction as in that appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph McKenna, Associate Justice of the Supreme Court of the United States, this 1st day of July in the year of our Lord one thousand nine hundred and twenty-two.

JOSEPH McKENNA,
*Associate Justice of the Supreme
Court of the United States.*

Service of the above Citation admitted this 8th day of July 1922.

U. S. WEBB AND
FRANK ENGLISH,
Attorney for Defendant U. S. Webb, Atty. Gen.
MATTHEW BRADY,
Attorney for Defendant Matthew Brady, Dist. Atty.

54 [Endorsed:] 694. U. S. Dist. Court. Supreme Court of the United States. Raymond L. Frick and N. Satow, Appellants, against U. S. Webb, as Attorney-General of the State of California, and Matthew Brady, as District Attorney of the City and County of San Francisco, State of California, Appellees. (Original.) Citation. Louis Marshall, Counsel for Appellants, 120 Broadway, Borough of Manhattan, City of New York, N. Y. Filed Jul. 8, 1922. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

Endorsed on cover: File No. 29,105. N. California D. C. U. S. Term No. 5555. Raymond L. Frick and N. Satow, appellants, vs. U. S. Webb, as Attorney General of the State of California, et al. Filed August 24th, 1922. File No. 29,105.

(7624)

OCT 31 1922

WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1922.

No.  **111**

RAYMOND L. FRICK and N. SATOW,

Appellants,

against

**U. S. WEBB, as Attorney General of the State of
California, and MATTHEW BRADY, as Dis-
trict Attorney of the City and County of San
Francisco, State of California,**

Appellees.

MOTION TO ADVANCE.

LOUIS MARSHALL,
Attorney for Appellants,
120 Broadway,
New York City.



Supreme Court of the United States

OCTOBER TERM, 1922.

No. 555.

RAYMOND L. FRICK and N.
SATOW,

Appellants,
against

U. S. WEBB, as Attorney General
of the State of California, and
MATTHEW BRADY, as District
Attorney of the City and Coun-
ty of San Francisco, State of
California,

Appellees.

Sirs :

PLEASE TAKE NOTICE that on the Record herein and on the annexed Statement a motion will be made at a session of the Supreme Court of the United States to be held at the Capitol in the City of Washington, D. C., at noon on November 13, 1922, or as soon thereafter as counsel can be heard, for an order advancing the argument of the above entitled cause to be heard with Porterfield against

Webb (No. 299) and Webb vs. O'Brien (No. 267)
now set for November 27, 1922.

Dated, New York, October 20, 1922.

Yours, etc.,

LOUIS MARSHALL,
Attorney for Appellants,
120 Broadway,
New York City.

To

U. S. WEBB, Esq.,
Attorney General of the State of California.

MATTHEW BRADY, Esq.,
District Attorney of the
City and County of San Francisco,
State of California.

Statement.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1922.

No. 555.

RAYMOND L. FRICK and N.
SATOW,

Appellants,

against

U. S. WEBB, as Attorney General
of the State of California, and
MATTHEW BRADY, as District
Attorney of the City and
County of San Francisco,
State of California,

Appellees.

TO THE HONORABLE THE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES.

The appellants, Raymond L. Frick and N. Satow, respectfully ask this Court to advance the argument of this cause on the following grounds:

This action was brought as a test case to procure an adjudication as to the constitutionality of the so-called California Alien Land Act, adopted by initiative on November 2, 1920. The appellant Frick is a citizen of the United States and of the State of California, who owns stock in a California

corporation authorized to acquire, possess, enjoy and convey agricultural lands, and which was in fact the owner, which stock he is desirous of selling to the appellant Satow, who is an alien of the Japanese race and not a free white person or of African nativity or of African descent and who is desirous of buying this stock. Under the terms of the statute aliens not eligible to citizenship under the laws of the United States are prohibited from acquiring, possessing, enjoying and transferring real property or any interest therein in the State of California or any shares of capital stock of a corporation owning agricultural lands in said State while all other aliens are permitted to do so.

All real property acquired in fee and any leasehold or other interest in real property less than the fee acquired in violation of the provisions of the act by an alien thereby prohibited from acquiring such ownership or interest and any share of stock in a corporation owning interest in agricultural lands is to escheat to the State of California. Every transfer of real property or of an interest therein, is declared to be void as to the State and the interest thereby conveyed or sought to be conveyed is to escheat to the State if the property interest therein involved is of such a character that an alien of the excluded class acquires it. If two or more persons conspire to effect a transfer of real property or of an interest therein in violation of the provisions of the act they are punishable by imprisonment not exceeding two years or by a fine not exceeding \$5,000, or both.

The appellants contend that the effect of this legislation is to deprive citizens of the United States owning stock in corporations owning agri-

cultural lands of their liberty and property and of the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. They also contend that it deprives aliens of the Japanese race resident in California of the right to buy stock in a corporation owning agricultural lands in that State, while all other aliens are permitted to do so, thereby depriving them of the equal protection of the laws and subjecting them to a discrimination on the ground of color, race and nationality, in violation of the same provision of the Constitution.

The question is also presented by the record in this cause as to whether or not this statute deprives the appellant Satow, who is a subject of the Empire of Japan, of rights, privileges and immunities secured to him under the treaty between the United States and Japan.

Prior to the passage of the act persons of the Japanese race were engaged in farming in the State of California and owned stock in corporations owning agricultural lands in substantial amounts.

Hence, not only are all Japanese residents of California who have heretofore been engaged in agriculture directly concerned in the determination of the appeal herein, but all other Japanese who may desire to earn a livelihood by becoming the owners or tenants of agricultural property or owners of stock of corporations owning agricultural property, as well as all citizens of the United States owning agricultural lands in California or stock in corporations owning agricultural lands who may find it advantageous to sell or lease such lands or stock to Japanese residents, are equally affected.

An early adjudication by this Court of the important questions involved herein is therefore believed to be in the public interest.

The cases of Porterfield vs. Webb, as Atty. Gen. (No. 299) and Webb, as Atty. Gen. vs. O'Brien (No. 267), involving the constitutionality of the same Act involved herein, has been advanced on the calendar of this court and is now set for November 27, 1922, and it is requested that this cause be advanced and set for the same time.

Respectfully submitted,

LOUIS MARSHALL,
Appellants' Counsel.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1922.

No. 555.

RAYMOND L. FRICK and N.
SATOW,
Appellants,
against

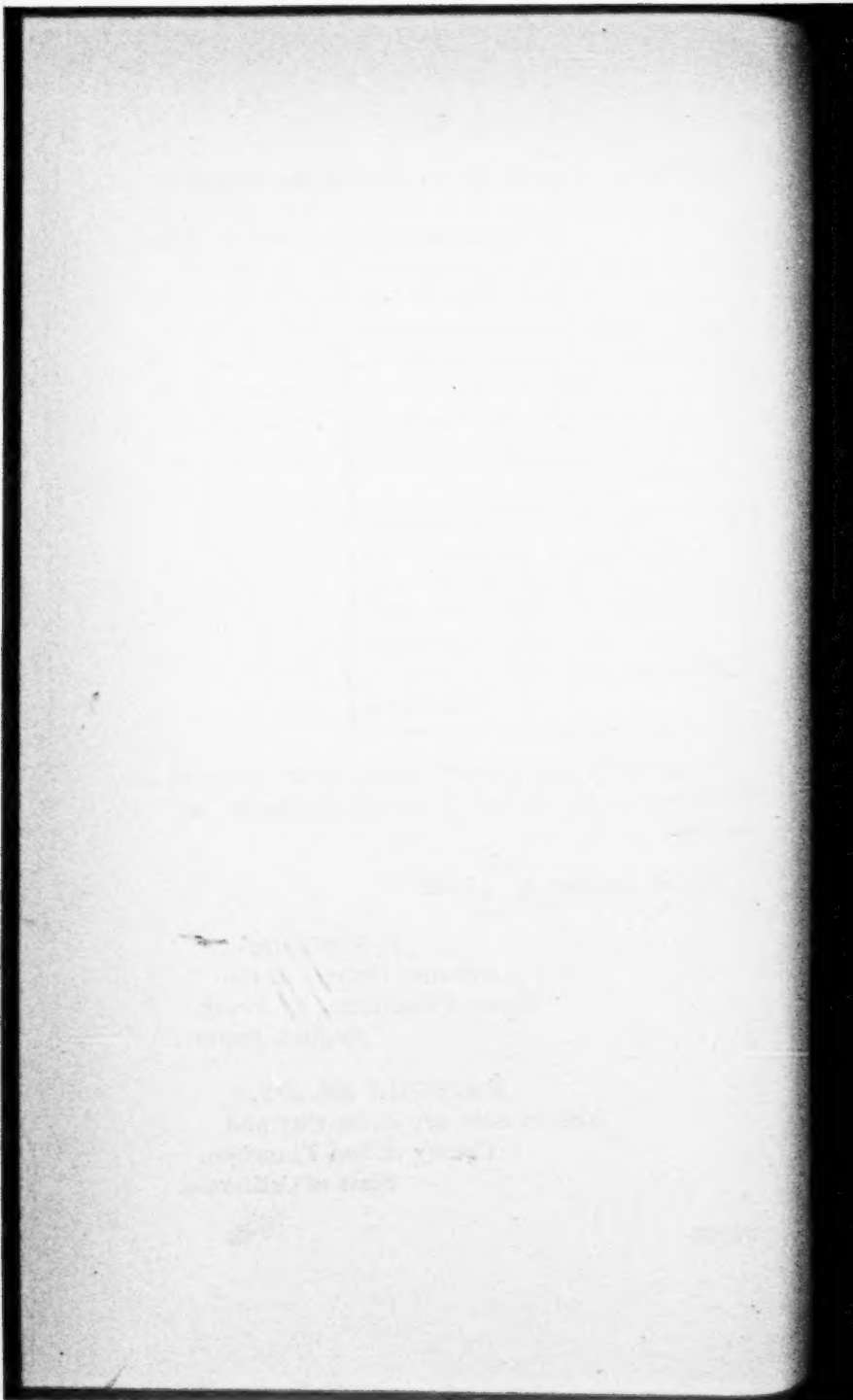
U. S. WEBB, as Attorney General
of the State of California, and
MATTHEW BRADY, as District
Attorney of the City and
County of San Francisco,
State of California,
Appellees.

Due, timely and proper service of the annexed
Statement and Notice of Motion is hereby ad-
mitted.

Dated, October *KH*, 1922.

U. S. WEBB,
Attorney General of the
State of California, by Frank
English, Deputy.

MATTHEW BRADY,
District Attorney of the City and
County of San Francisco,
State of California.



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ARGUMENT:

POINT I. Assuming that the ownership of shares of stock in a California corporation having the title to agricultural land constitutes an interest in such land, the California Alien Land Law, which forbids aliens ineligible to citizenship under the laws of the United States to acquire such shares, although the right to do so has been conferred on all other aliens, denies to the former the equal protection of the laws within the meaning of the Fourteenth Amendment..... 8-10

POINT II. The prohibition of the acquisition by an ineligible alien of shares of stock in a California corporation owning agricultural land, such shares being personal property, while all other aliens are expressly permitted to acquire such shares, denies to the former the equal protection of the laws.. 10-22

POINT III. Under a fair interpretation of that portion of Section 3 of the Alien Land Law on which the appellees rely the proposed sale to and purchase by Satow of the twenty-eight shares of stock of the Merced Farm Company is not prohibited 22-24

POINT IV. The Act is likewise unconstitutional because it deprives Frick, who is a citizen of the United States, of the right to enter into a contract for the sale of his shares of stock and because it deprives Satow of his liberty by debarring him from entering into a contract for the purchase of corporate shares 25

POINT V. Section 3 of the Alien Land Law as interpreted by the State, offends against the treaty between the United States and Japan, which permits the citizens or subjects of the respective parties to have liberty "to carry on trade, wholesale and retail," in the respective territories of the contracting nations, "and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects 25-27

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Supreme Court of the United States.

OCTOBER TERM, 1922.

No. 555.

RAYMOND L. FRICK AND N. SATOW,
Appellants,

against

U. S. WEBB, as Attorney General
of the State of California, and
MATTHEW BRADY, as District
Attorney of the City and
County of San Francisco, State
of California.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

APPELLANTS' POINTS.

This is an appeal from an order denying an interlocutory injunction, the application for such order having been heard by Honorable William W. Morrow, Circuit Judge, and Honorable William H. Sawtelle and Honorable Maurice T. Dooling, District Judges, pursuant to statute, the purpose being to restrain the defendants from directly or indirectly permitting any proceeding in law or

equity to be brought against the appellants for the enforcement of the Alien Land Law submitted by the initiative and approved by the electorate of California on November 2, 1920, from causing the appellants to be arrested for violating the terms and provisions of the act, and from preventing the appellants from carrying out a transaction for the sale and purchase of shares of stock of a corporation organized under the laws of California and owning agricultural lands in that State; the appellants contending that the act is unconstitutional, in that it denies to them the equal protection of the laws, deprives them of their liberty and property without due process of law, and is in conflict with Section 1977 of the Revised Statutes of the United States and repugnant to the treaty between the United States of America and the Empire of Japan (*Rec.*, pp. 5, 19).

The Bill of Complaint.

The appellant Frick is a citizen of the United States and of the State of California; the appellant Satow, a Japanese and a subject of the Emperor of Japan and a resident of California. The defendant Webb is the Attorney General of the State of California, and the defendant Brady is the District Attorney of the City and County of San Francisco, in that State (*Rec.*, p. 1).

Frick is the owner of twenty-eight shares of the capital stock of the Merced Farm Company, a corporation organized under the laws of the State of California, a majority of whose stock is owned by citizens of the United States. By its articles of incorporation that company is authorized to acquire, possess, enjoy and convey agricultural land. It is in fact the owner of approximately

twenty-two hundred acres of such land situated in Merced County. The appellant Satow wishes to purchase these shares at their present market value, \$4,250, and the appellant Frick is willing to sell the shares at that price, which Satow is prepared to pay for them (*Rec.*, p. 2).

Assuming to act under the Alien Land Law, the defendants have threatened to enforce its provisions against the appellants in the event that they should enter into a contract for the sale and purchase of these shares, and will attempt to institute escheat proceedings to forfeit these shares (*Rec.*, pp. 3, 4).

The appellants are deterred from consummating the transaction for fear of the escheat proceedings, and they are prevented from testing the constitutionality and validity of the act because of the drastic character of this enactment, so that, unless the Court shall pass upon the validity of the statute in this action, the appellants will be compelled to submit to it whether it be valid or not, and thereby would be deprived of their liberty and property without due process of law and denied the equal protection of the laws, in contravention of the Fourteenth Amendment to the Constitution of the United States and of the terms of the treaty between the United States and the Empire of Japan (*Rec.*, pp. 4, 5).

The California Alien Land Law.

The full text of this statute is to be found in Appendix A of the brief in *Porterfield and Mizuno v. Webb and Woolwine*, submitted herewith. The controlling provisions applicable to this case will be briefly quoted (*Rec.*, pp. 6, 7).

"Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state."

"Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent, and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise."

"Sec. 3. Any company, association or corporation organized under the laws of this or any other state or nation, of which a majority of the members are aliens other than those specified in section one of this act, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise. Hereafter all aliens other than those specified in section one hereof may become members of or acquire shares of stock in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise."

Section 7 provides for the escheat of real property acquired in fee (*Rec.*, p. 8).

Section 8 provides for the escheat of any leasehold or other interest in real property less than the fee acquired in violation of the provisions of the act by any alien mentioned in Section 2 of the act, or by any company, association or corporation mentioned in Section 3 of the act.

After providing for the institution of proceedings to have the escheat adjudged in the manner provided in Section 7, Section 8 also provides (*Rec.*, p. 9):

"Any share of stock or the interest of any member in a company, association or corporation hereafter acquired in violation of the provisions of section three of this act shall escheat to the state of California. Such escheat shall be adjudged and enforced in the same manner as provided in this section for the escheat of a leasehold or other interest in real property less than the fee."

Section 10 provides (*Rec.*, p. 10):

"If two or more persons conspire to effect a transfer of real property, or of an interest therein, in violation of the provisions hereof, they are punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand dollars, or both."

Articles I and II of the Treaty of Commerce and Navigation with Japan, dated February 21, 1911, read (*Rec.*, pp. 12, 13).

"ARTICLE I."

The citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the

other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.

They shall not be compelled, under any pretext whatever, to pay any charges or taxes other or higher than those that are or may be paid by native citizens or subjects.

The citizens or subjects of each of the High Contracting Parties shall receive, in the territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or may be granted to native citizens or subjects, on their submitting themselves to the conditions imposed upon the native citizens or subjects.

They shall, however, be exempt in the territories of the other from compulsory military service either on land or sea, in the regular forces, or in the national guard, or in the militia; from all contributions imposed in lieu of personal service, and from all forced loans or military exactions or contributions."

"ARTICLE II.

The dwellings, warehouses, manufactories and shops of the citizens or subjects of each of the High Contracting Parties in the territories of the other, and all premises appertaining thereto used for purposes of residence or commerce, shall be respected. It shall not be allowable to proceed to make a domiciliary visit to, or a search of, any such buildings and premises, or to examine or inspect books, papers or accounts, except under the conditions and with the forms prescribed by the laws, ordinances and regulations for nationals."

Assignments of Error.

Stated in abridged form, they are as follows :

(1) That the court below erred in adjudging the California Alien Land Law to be a constitutional act.

(2) That it erred in adjudging that the act did not deprive the appellant Frick of his liberty and property without due process of law or deny to him the equal protection of the law.

(3) That it erred in adjudging that the act did not deny to the appellant Satow the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment.

(4) That it erred in adjudging that the act did not deprive the appellant Satow of the liberty of pursuit of a lawful occupation, to wit, the purchase of shares of stock in a California corporation authorized to acquire, possess, enjoy and convey agricultural land and which was in fact the owner of such land, in violation of Section 1 of the Fourteenth Amendment.

(5) That it erred in adjudging that the act did not deprive the appellant Satow of his rights, privileges and immunities secured to him under the treaty between the United States of America and the Empire of Japan.

(6) That it erred in adjudging that the Fourteenth Amendment did not give the appellant Frick the right to sell the shares of stock owned by him in a California corporation which had the title to agricultural lands in the State, to the appellant Satow, although an alien of the Japanese race.

(7) That it erred in adjudging that the appellant Satow, an alien of the Japanese race, did

not have the right to acquire, possess and enjoy shares of stock in a California corporation having the title to agricultural lands in the State.

(8) That it erred in refusing to decide that the California Alien Land Law was unconstitutional and in violation of the Fourteenth Amendment, in that it discriminated against the appellant Satow on the ground of color, race and nationality.

(9) That it erred in refusing to decide that the act deprived the appellant Satow of the rights, privileges and immunities secured to him under the treaty between the United States of America and the Empire of Japan (*Rec.*, pp. 23 to 27).

POINTS.

I.

Assuming that the ownership of shares of stock in a California corporation having the title to agricultural land constitutes an interest in such land, the California Alien Land Law, which forbids aliens ineligible to citizenship under the laws of the United States to acquire such shares, although the right to do so has been conferred on all other aliens, denies to the former the equal protection of the laws within the meaning of the Fourteenth Amendment.

In the brief submitted herewith in *Porterfield and Mizuno v. Webb and Woolwine*, we have so fully considered and discussed the California Alien Land Law in its general aspects and in the light of the authorities, that we ask that the appellants' argument in that case may be regarded as

in all respects applicable to the case at bar, in order to avoid needless repetition.

This is the more important in view of the fact that the appellees, in their argument below, practically treated the case on the theory that a share of stock in a corporation owning land constitutes an interest in land. This contention was sustained in the court below, where, in the opinion rendered, the proposition to be decided was stated thus (*Rec.*, p. 21):

“The remaining material question is: ‘Is the ownership of twenty-eight shares of the capital stock of the Merced Farm Company, a corporation organized under the laws of the State of California for agricultural purposes, such an interest in real property as to bring him (Satow) within the prohibitory provisions of this act?’ ”

The answer given in the opinion to this interrogatory is:

“We think the ownership of stock in such a corporation would be an interest in real property which would bring the alien owner of such stock (who is ineligible to citizenship) within the prohibitory provisions of the act, and that the Attorney General is authorized by Sections 7 and 8 of the act to institute proceedings to have the escheat of such interest in real property in the manner provided by Section 474 of the Code of Civil Procedure of this State, and that such proceedings would not be in violation of the treaty between the United States and Japan or the Fourteenth Amendment to the Constitution of the United States” (*Rec.*, p. 21).

The Court thus made Section 3 which relates to the acquisition of shares of stock by an alien in-

eligible to citizenship under the laws of the United States, the equivalent of the other provisions of the act relating to the ownership of the fee, or of a leasehold, or of an interest less than the fee, in real property.

If that be true—although we contend that it is not—then it would necessarily follow, if our argument in the *Porterfield* case is sound, that the judgment rendered herein by the court below cannot be sustained.

II.

The prohibition of the acquisition by an ineligible alien of shares of stock in a California corporation owning agricultural land, such shares being personal property, while all other aliens are expressly permitted to acquire such shares, denies to the former the equal protection of the laws.

Section 1 of the act, in broad terms, lays down the general principle that all aliens eligible to citizenship may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in the State.

Section 2 declares that all aliens other than those eligible to citizenship may acquire, possess, enjoy and transfer real property, or any interest therein, in the State, in the manner, to the extent and for the purpose prescribed by treaty with the country of which the alien is a citizen or subject, and not otherwise.

The first sentence of Section 3 relates to the acquisition of "real property, or any interest therein, in this state," by a corporation of which a ma-

jority of the members are ineligible aliens or in which a majority of the issued capital stock is owned by such aliens.

Section 6 provides, that whenever it appears to the court in any probate proceeding that by reason of the provisions of the act any heir or devisee "cannot take real property in this state or membership or shares of stock in a company, association or corporation," a sale of the property is to be made in the manner prescribed.

Section 7 relates to the escheat of "any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act."

Section 8 refers to the escheat of "any leasehold or other interest in real property less than the fee, hereafter acquired in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act."

At the end of the section is to be found the provisions that "any share of stock or the interest of any member in a company, association or corporation hereafter acquired in violation of the provisions of section three of this act shall escheat to the state of California. Such escheat shall be adjudged and enforced in the same manner as provided in this section for the escheat of a leasehold or other interest in real property less than the fee."

This language clearly indicates that a share of stock or the interest of any member in a company, acquired in violation of Section 3, is not regarded as an interest in real property, but as something

separate and independent; otherwise it would have been included within the term by proper definition, assuming, but not conceding, that that could be done. The company referred to in Section 3 is one acquiring the title to the real property itself. Its ownership is, throughout the act, differentiated from that of a stockholder. The latter's ownership is in no way described as an interest in real property. To have undertaken to do so would have been inconsistent not only with the common law, but with the practically uniform statute law of this country and the well-conceived theories of property and of public policy that have long prevailed.

The disability of aliens at common law in respect to the ownership of real estate does not extend to personal property. Aliens are capable of acquiring, holding and transmitting it in the like manner as citizens. This includes the right to take and hold personal property by bequest, and the right of an alien testator to pass his personalty by will.

In *Calvin's Case*, 7 Coke, 17a, it is said:

"An alien friend, as at this time, a German, a Frenchman, a Spaniard (all kings and princes in Christendom being now in league with our sovereign; but a Scot, being a subject cannot be said to be a friend, nor Scotland to be *solum amici*) may by the common law have, acquire, and get within this realm, by gift, trade, or other lawful means, any treasure, or goods personal whatsoever, as well as an Englishman, and maintain any action for the same."

See also *Fourdrin v. Gowdey*, 3 Mylne & Keen, 397, 408.

In 1 *Blackstone's Commentaries*, 372, we read:

"Yet an alien may acquire property in goods, money, and other personal estate, or may have a house for his habitation, for personal estate is of a transitory and movable nature; and besides, this indulgence to strangers is necessary for the advancement of trade. Aliens also may trade as freely as other people, only they are subject to higher duties at the custom house and there are also some obsolete statutes of Henry VIII prohibiting alien artificers to work for themselves in this Kingdom, but it is generally held that they were virtually repealed by Statute 5 Eliz. c., 7. Also an alien may bring an action concerning personal property, and may make a will to dispose of his personal estate, not as it is in France, where the king at the death of an alien is entitled to all he is worth by the *droit d'aubaine* or *jus albinatus*, unless he has a peculiar exemption."

To the same effect is 2 *Kent's Commentaries*, 62.

The American decisions support this doctrine.

In *McLearn v. Wallace*, 10 Pet. 624, it was recognized that the personal estate of a decedent went to his alien next of kin.

In *Beck v. McGillis*, 9 Barb. (N. Y.) 35, it was likewise held that the disability of aliens to take an interest in real property does not extend to personal property.

To like effect is the decision in *Meakings v. Cromwell*, 5 N. Y. 136.

In *Cosgrove v. Cosgrove*, 69 Conn. 416, which involved a gift of stock to aliens by a testator, the Court said:

"The stock, however, is personal estate and the alien sisters can share in this gift."

In *Detwiler v. Commonwealth*, 131 Pa. 614, 18 Atl. Rep. 990, Mr. Justice Williams said:

"We put the right of the stockholder not so much on the provision of the Constitution of the United States which was discussed with so much learning by the judge of the court below, as upon the nature of the stock as a personal chattel, and the right of an alien friend at the common law to deal in personal goods, embark in trade, loan money, sue and be sued for the collection of debts, and the protection of his person and personal estate."

In *Cleveland, &c. Ry. Co. v. Osgood*, 73 N. E. Rep. 285, the Appellate Court of Indiana said:

"The disability of aliens at common law in respect to the ownership of real estate did not extend to personal property, and aliens were capable of acquiring, holding, and transmitting movable property in like manner as citizens."

In *Marx v. McGlynn*, 88 N. Y. 357, it was held that while a devise of real estate to an alien is void under the statute, a devise to executors, who are citizens, in trust, to pay the income to an alien, is valid, since the beneficiary takes no interest in the lands. Judge Earl said:

"Bradley has no estate whatever in the land. What he gets is a personal right, and the income of the real estate, when it comes to him, will come as personal property."

It has long been well settled that shares of stock in a corporation are personal property, whether they be declared such by statute, as is sometimes

the case, or not, and whether the property of the corporation itself consists of realty, as in the case of mining companies, land companies, realty companies, canal companies, and the like, or of personal property only.

Section 324 of the *Civil Code of California* provides:

“Whenever the capital stock of any corporation is divided into shares and certificates therefor are issued, such shares of stock, except as hereinafter provided, are personal property, and may be transferred by endorsement by the signature of the proprietor, his agent, attorney, or legal representative, and the delivery of the certificate; * * *”

The only exception is in the case of corporations organized for the sale and distribution of water for irrigation purposes or for domestic use, as to which it is declared that the by-laws may provide that water shall only be supplied to the owners of the capital stock and that such stock shall be appurtenant to certain lands when they are described in the certificate issued therefor.

Among various cases decided by the courts of California in which shares of stock have been held to be personalty are:

- Atkins v. Gamble*, 42 Cal. 86;
- People v. Mills National Gold Bank*, 51 Cal. 508;
- Payne v. Elliot*, 54 Cal. 339;
- San Francisco v. Flood*, 64 Cal. 504;
- Tregear v. Etiwanda Water Co.*, 76 Cal. 537;
- Mattingly v. Roach*, 84 Cal. 207;
- Calkins v. Equitable Bldg. & Loan Assn.*, 126 Cal. 531.

Among the many decisions recognizing that shares of stock are personalty rendered in various jurisdictions are the following:

Tappan v. Merchants National Bank, 19 Wall. 490.

Jellenik v. Huron Copper Min. Co., 177 U. S. 1.

Hawley v. Malden, 232 U. S. 1, 12.

Stanwood v. Stanwood, 17 Mass. 57.

Bellows Falls Power Co. v. Commonwealth, 222 Mass. 51.

DeNunzio v. DeNunzio, 90 Conn. 342.

Wuller v. Chuse Grocery Co., 241 Ill. 398.

Weaver v. Burden, 49 N. Y. 286.

Matter of Jones, 172 N. Y. 575.

United States Radiator Co. v. New York, 208 N. Y. 152.

Arnold v. Ruggles, 1 R. I. 165, 167, 168.

Lowndes v. Cooch, 87 Md. 478.

Lee v. Sturgis, 46 Ohio St. 153.

McKeon v. Northampton County, 49 Pa. 519.

In *Jellinek v. Huron Copper Mining Co.*, *supra*, Mr. Justice Harlan said:

"We need not discuss, in the light of the authorities, whether the shares of stock in the defendant company may not be accurately described as chattels or choses in action, or property in the nature of choses in action. Chief Justice Shaw, in *Hutchins v. State Bank*, 12 Met. 421, 426, said: 'If a share in a bank is not a chose in action, it is in the nature of a chose in action, and what is more to the purpose it is personal property.' "

In *Arnold v. Ruggles*, *supra*, quoted with approval in *Matter of Jones*, *supra*, the Court, considering the nature of a share of stock, said:

"Is a share, then, thus made up, to be deemed real estate, or as necessarily partaking of the realty? A share must pass one way or the other, as an entire thing. It cannot be resolved into the elements, of which the assets of the corporation consist, and a part pass to the heir and a part to the executor without destroying it and with it the whole concern. It is an entirety and must be either real or personal. And which is it? It will not do to make the property or the corporation a criterion, for the property of almost every corporation is more or less mixed. We must make the share itself, those rights which constitute its beneficial interest, the criterion. Its right then to receive a dividend of the whole concern, whether real or personal, is the interest by which it is to be judged."

In *Hawley v. Malden*, *supra*, Mr. Justice Hughes said:

"It is well settled that the property of the shareholders in their respective shares is distinct from the corporate property, franchises and capital stock, and may be separately taxed."

In *Cummings v. People*, 211 Ill. 392, 71 N. E. Rep. 1031, Mr. Justice Wilkin said:

"Being a stockholder in the corporation gave him no right, title or interest in the real estate owned by the corporation. 'A share of stock may be defined as a right which its owner has in the management, profits, and ultimate assets of the corporation.' Cook on the Law of Stock and Stockholders, § 5. 'With reference more particularly to the essential

nature of shares of stock, it has been well settled that such property is personalty, and not realty. It is said that a share of stock is not real estate; has nothing to give it the character of real estate; is not land, nor a hereditament, nor an interest in either of them.' *Id.* § 6. 'It is now a well established principle that the shares of the capital stock of corporations are personal property. And this applies equally to all corporations, including those whose property consists of real estate, although attempts were formerly made to give to the stock of those companies the character of an interest in real estate.' *Beach on Private Corporations*, §612. 'A stockholder has no legal title to the corporation property, or to any separate part thereof, until a division is made on the winding up or dissolution of the corporation; and prior to that time he has no right to take any of the corporate property for his own purpose.' 26 *Am. & Eng. Ency. Law*, p. 946. The assets of a private corporation, whether consisting of real estate or personal property, belong to the corporate body, and the stockholders are not in any sense the owners thereof. We think this proposition so well established that the citation of authorities in support of it is unnecessary."

In *Champollion v. Corbin*, 71 N. H. 78, the plaintiff claimed the title to certain shares of stock as the only heir at law of the deceased owner of the shares. This contention was rejected, Mr. Justice Chase saying:

"The subject-matter of this suit is ten shares of the capital stock of the Blue Mountain Forest Association, a corporation organized under the general laws of the State. Although the property of the corporation consisted largely of real estate, the shares are

choses in action, or property in the nature of choses in action—not realty.”

A sale of shares of stock comes within the terms of the Statute of Frauds, whether the act refers to “goods, wares and merchandise,” or to “personal property,” or to “goods or choses in action.” This doctrine is recognized, with practical unanimity, by the American courts.

- Mayer v. Child*, 47 Cal. 142.
Ayres v. French, 41 Conn. 142.
Tisdale v. Harris, 20 Pick. 9.
Berwin v. Bolles, 183 Mass. 340.
Baltzen v. Nicolay, 53 N. Y. 467.
Tompkins v. Sheehan, 158 N. Y. 617.
McIlroy v. Richards, 148 Mich. 694.
Sprague v. Hosie, 155 Mich. 30, 118 N. W. 497.
Greenwood v. Law, 55 N. J. Law, 168.
Hewson v. Peterman Mfg. Co., 76 Wash. 600, 136 Pac. Rep. 1158.
Korrer v. Madden, 152 Wis. 646.
Southern Life Ins. & Tr. Co. v. Cole, 4 Fla. 359.
Hinchman v. Lincoln, 124 U. S. 38.
Franklin v. Matao Gold Min. Co., 158 Fed. Rep. 941, 16 L. R. A., N. S., 381.
Snow Storm Min. Co. v. Johnston, 186 Fed. Rep. 745.

In the light of these authorities this case presents an entirely different aspect from one where the State is seeking to debar aliens from the ownership of real property in accordance with a policy that quite generally prevails and which, if applied equally to all aliens, would not militate against any

constitutional prohibition. Even had the California act undertaken to declare a share of stock real estate, that would not have made it so, or have brought it within the reason of the rule which permits a State to inhibit ownership by aliens of real property within its territory. The mere fact that the legislature should term a horse, or an automobile, or household furniture, or a promissory note, or the stock in trade of a merchant, or products of the soil, such as lumber, grain, sugar, fruit, tobacco, real property would be entirely futile and a mere evasion of the equality clause of the Fourteenth Amendment.

Such legislation, even if made applicable to all aliens regardless of race, color or nationality, would come within the rule laid down in *Truax v. Raich*, 239 U. S. 39; *Ex parte Kotta*, 62 Cal. Dec. 315, 200 Pac. Rep. 957; *Fraser v. McConway & Torley Co.*, 82 Fed. Rep. 257; *State v. Montgomery*, 94 Me. 192, and *Truax v. Corrigan*, 257 U. S. 312, and would sin against the fundamental principle laid down in *Yick Wo v. Hopkins*, 118 U. S. 268; *Gulf, Colorado & Santa Fe Ry. Co. v. Ellis*, 165 U. S. 150, and the other leading cases in which the equality clause of the Fourteenth Amendment has been interpreted and applied.

Any other conclusion would enable the State, through its legislature, to forfeit all the belongings of any alien, to make it criminal for him to own goods, chattels, or choses in action of any kind, and to strip him, not only of every vestige of property, but of his liberty to engage in any occupation or employment, or to earn a livelihood. He might be forbidden to till the soil as a farmhand, or to extract ore from a mine as a laborer, because it might be said in both cases

that his livelihood would be derived from the land which he cultivates or mines, and because in each instance the legislature might, with as much justification as in the case at bar, declare that such employment creates an interest in real property.

The nature of a share of stock as property must be determined by its inherent characteristics and physical qualities, and not by a legislative fiat. In this act we have not, however, a prohibition of all aliens against the acquisition of the ownership of shares of stock in a corporation owning agricultural lands, but such right of ownership is sought to be withheld from aliens ineligible to citizenship solely because of their race, color and nationality. All of the shares of stock of the Merced Farm Company might with impunity be acquired by anybody of the Caucasian or African race, and yet Satow, a Japanese, if he undertook to purchase a single share of the stock from the owner, would have it forfeited in escheat proceedings, and might find himself subjected to criminal prosecution.

Assuming that the corporation had issued 100 shares of stock and all of it had been acquired by a British alien, the latter might lawfully distribute those shares to German, Austrian, Bulgarian, Turkish, Russian, Polish, Italian, Hungarian and Greek aliens; but the moment that a Japanese alien appeared upon the scene the right to sell and to buy would at once cease and the free disposition of the shares of stock would end.

By the same token, the legislature might make like restrictions with regard to the acquisition of shares of stock in a company authorized to possess lands for other than agricultural, residential and commercial purposes. That would include cor-

porations operating mines, railways, oil properties, quarries and water works, all of which are basically founded on the ownership of land.

If it comes within the legislative competency of a State to say today to one of the Japanese race that he shall not be permitted to acquire any shares of stock in a corporation owning land of any kind, then it must have like power tomorrow to exclude aliens of other races and nationalities, British or French, for example, and withdraw the ban now laid upon Japanese and Chinese and permit them to acquire such shares.

Weighing these potentialities, it is difficult to imagine a case which comes so directly within the beneficent purpose of the equality clause as does the present.

III.

Under a fair interpretation of that portion of Section 3 of the Alien Land Law on which the appellees rely the proposed sale to and purchase by Satow of the twenty-eight shares of stock of the Merced Farm Company is not prohibited.

Examining that section more closely, we find that it contains two provisions. The first is directed against any corporation organized under the laws of California "or any other state or nation," of which a majority of the members are aliens ineligible to citizenship or in which a majority of the issued capital stock is owned by such aliens. That provision is not involved in the present case, because it is not claimed that even if Satow were permitted to purchase the twenty-

eight shares of stock of the Merced Farm Company a majority of the members of that company would be aliens or that a majority of its issued capital stock would be owned by aliens. It expressly appears that the majority of the stock is owned by citizens.

The second provision is the one involved in the case at bar, and provides that all aliens other than those specified in Section 1—consequently referring to aliens ineligible to citizenship—“may become members of or acquire shares of stock” in any corporation “that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes-prescribed” by treaty, “and not otherwise.”

The Merced Farm Company is authorized by its articles of incorporation to acquire, possess, enjoy and convey agricultural land. The appellees contend that Satow is an alien other than one specified in Section 1 of the act, that section relating, as it does, to aliens eligible to citizenship under the laws of the United States. We have, therefore, an alien not specified in Section 1, and shares of stock in a company authorized to acquire, possess, enjoy and convey agricultural land, and permission that the alien referred to may become a member of or acquire shares of stock in such a company.

The phrase following the words “agricultural land,” namely, “in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject,” does not detract from the legal effect of the right conferred of acquiring shares of stock in a corporation author-

ized to hold agricultural land. It is certain that the corporation referred to in Section 3 may own agricultural land, and if the treaty with Japan does not specifically refer to such land the rule *falsa demonstratio non nocet* would come into play. This is especially true when one considers that this is a highly penal statute, one involving a forfeiture. In so far as the statute refers to a treaty, the latter must be read into it, and the rule relating to the interpretation of a treaty, namely, that if it admits of two constructions, one restrictive as to the rights that may be claimed under it and the other liberal, the latter is preferred, is likewise applicable.

Shanks v. DuPont, 3 Pet. 242.

Hauenstein v. Lynham, 100 U. S. 483.

Lee v. Boise Development Co., 21 Idaho, 461, 122 Pac. Rep. 851.

Consequently, whatever may have been the purpose of the draftsman of this measure, he has not accomplished that purpose, even in the absence of a constitutional obstacle to his doing so.

In this connection we refer to the controlling canons of interpretation as laid down in the authorities collated at pages 18 and 19 of the Appellees' Points in *Webb v. O'Brien* submitted herewith.

IV.

The A is likewise unconstitutional because it deprives Frick, who is a citizen of the United States, of the right to enter into a contract for the sale of his shares of stock and because it deprives Satow of his liberty by debarring him from entering into a contract for the purchase of corporate shares.

In this aspect of the case the decisions in *Yick Wo v. Hopkins*, *Truax v. Raich*, *Butchers' Union, &c. Co. v. Crescent City Co.*, 111 U. S. 746, *Allgeyer v. Louisiana*, 165 U. S. 578, 589, 590, *Smith v. Texas*, 233 U. S. 630, and *Coppage v. Kansas*, 236 U. S. 1, are in point.

V.

Section 3 of the Alien Land Law as interpreted by the State, offends against the treaty between the United States and Japan, which permits the citizens or subjects of the respective parties to have liberty "to carry on trade, wholesale and retail," in the respective territories of the contracting nations, "and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects."

Here Satow is seeking to complete a transaction involving the purchase of twenty-eight shares of the capital stock of the Merced Farm Company. These shares of stock are a chose in action, and, therefore, personal property. Such a transaction

is as much the carrying on of trade as would be a purchase of Government bonds, or of negotiable paper, or of merchandise. If Satow opened a broker's office in San Francisco for the purpose of dealing in stocks, would he not be literally carrying on trade; would not the treaty protect him in the exercise of that right to the full extent that it would a citizen of the United States engaged in a like enterprise?

To carry on trade is to engage in commerce in any or all of its various phases. It is the business of exchanging commodities by buying and selling them for money. Those commodities need not necessarily be merchandise, but, in the colloquial sense of the word, they may be such securities as are "traded in" on the exchanges or in transactions between man and man.

United States v. American Tobacco Co.,
164 Fed. Rep. 700, 708;

United States v. Douglas, 190 Fed. Rep.
482, 484;

Finnegan v. Noerenberg, 52 Minn. 239, 18
L. R. A. 778;

People v. Blake, 19 Cal. 579, 584.

In *State v. Hunt*, 129 N. C. 686, 40 S. E. Rep. 216, 217, it was said that "trade comprehends every species of exchange or dealing, either in the produce of land, manufactures, or bills, or in money; but it is chiefly used to denote the barter or purchase and sale of goods, wares, or merchandise, either by wholesale or retail."

In *May v. Sloan*, 101 U. S. 231, 237, it was said:

"The word 'trade' in its broadest signification, includes not only the business of exchanging commodities by barter, but the busi-

ness of buying and selling for money or commerce and traffic generally."

Hence a sale of land was held to be "a trade."

In *Bank of the United States v. Norton*, 10 Ky. 422, 425, it was held that the charter of a bank declaring that it should not directly or indirectly "deal or trade" in anything except bills of exchange, gold or silver bullion, or in the sale of goods really and truly pledged for money loaned, and not redeemed in due time, does not prohibit the corporation from purchasing promissory notes, but only denotes what may or may not be bought and sold by the bank.

See also

Fleckner v. United States Bank, 8 Wheat. 338, 351.

The word "trade" is frequently used in the sense of commerce. Dealing in lottery tickets has therefore been regarded as carrying on commerce.

Champion v. Ames, 188 U. S. 321.

VI.

It is respectfully submitted that the order of the District Court should be reversed and the case remanded with instructions to grant the injunction prayed for by the appellants.

LOUIS MARSHALL,
Appellants' Counsel.

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IN THE
SUPREME COURT
OF THE
UNITED STATES

October Term, 1922.

No. 555.

RAYMOND L. FRICK and N. SATOW,
Appellants,

vs.

U. S. WEBB, as Attorney General of the
State of California, and MATTHEW
BRADY, as District Attorney of the
City and County of San Francisco,
State of California,

Appellees.

APPEAL FROM THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA,
SECOND DIVISION.

BRIEF FOR APPELLEES.

NOTE.—Attached as an appendix hereto, and marked "Exhibit A" is a copy of the California Alien Land Act of 1920.

STATEMENT OF THE CASE.

Raymond L. Frick, a citizen of the United States and of the State of California, and N. Satow, a subject of the Emperor of Japan, born in the Empire

of Japan, of Japanese parents, and also a resident of California, are the plaintiffs and appellants in this proceeding. U. S. Webb, as attorney general of the state, and Matthew Brady, as district attorney of the city and county of San Francisco, are the defendants and appellees. The bill of complaint is brought against defendants in their official capacity to enjoin them from bringing any proceeding at law or in equity to escheat certain shares of stock owned by the citizen plaintiff, under the terms of the California Alien Land Act of 1920. (Statutes 1921, page lxxxiii.) It is alleged that the defendants so threatened to prosecute escheat proceedings under section 8 of the act. The citizen intends to sell, for the sum of \$4,250, to the alien plaintiff, twenty-nine shares of the capital stock of the Merced Farm Company, a corporation organized under the laws of California, which corporation is the owner of and by its articles of incorporation authorized to acquire, possess, enjoy and convey agricultural land, which agricultural land consists of twenty-two hundred acres in Merced County, California. A majority of the issued capital stock of the corporation is owned by citizens of the United States. So far as the petition shows, the said twenty-two hundred acres of agricultural land is the only property belonging to the said Merced Farm Company. There is no allegation of the said Merced Farm Company engaging in any business of any character whatsoever, except this allegation that it so owns this agricultural land

in this state, and that it is so authorized to acquire, possess, enjoy and convey such agricultural land in this state.

Section 3 of the Alien Land Act provides that if a majority of the capital stock of this corporation belonged to ineligible aliens, the corporation could acquire agricultural lands only as permitted by the treaty between this country and the nation or country of which such stockholders are citizens or subjects.

With reference to the corporation before the court in this case, where there is no such majority ownership in aliens, the same section 3 provides that any ineligible alien may acquire shares of stock in such a corporation only as permitted by any treaty between this country and the nation or country of which such alien is a citizen or subject.

Section 7 of the act provides that any property acquired by the corporation in which the majority of stock is owned by ineligible aliens, and where such a treaty does not protect such ownership, may be escheated to the state.

Section 8 provides that any shares of stock so owned by ineligible aliens, where such ownership is not protected by such a treaty, may be escheated to the state.

It is the theory of defendants that the treaty between the United States and Japan does not protect the particular ownership of these twenty-two shares of stock in the hands of the plaintiff ineligible alien, and that, therefore, they may be escheated to the state

under the procedure outlined in section 8 of the act.

The injunction sought in the bill of complaint is asked for on the theory that the citizen plaintiff is entitled to relief under the protection of the Fourteenth Amendment to the United States Constitution, and that the alien plaintiff is entitled to such relief by reason of the said Fourteenth Amendment, and also by reason of the treaty existing between this country and Japan.

ARGUMENT.

I.

THE OWNERSHIP OF A SHARE OF STOCK IN A CALIFORNIA AGRICULTURAL CORPORATION CONSTITUTES AN INTEREST IN AGRICULTURAL LANDS, PROHIBITED TO INELIGIBLE ALIENS BY THE CALIFORNIA ALIEN LAND ACT.

As we view this case, the vital and all-important question to be answered is,

Does the ownership of a share of stock in a California corporation, whose assets are agricultural lands of said state, constitute an interest in real property in said state?

If so, there can be no question that the Alien Land Act of California prohibits such ownership in an alien ineligible to citizenship in this country.

That such an interest in the agricultural lands of the State may be prohibited without violating the United States Constitution or the United States-Japan Treaty has been decided by the United States District Court of California, and by the United States District Court in the State of Washington, in the two cases which are to be argued before this Court at the same time that this case is argued. That is, our California case of *Porterfield vs. Webb*, 279 Fed. 114, and the State of Washington case of *Terrace vs. Thompson*, 274 Fed. 841, said cases being respectfully, October Term, 1922, No. 299, and October Term, 1922, No. 302.

We are assuming that the motion of appellants to advance this cause for argument to November 27, 1922, will probably be granted. We plan to have our brief in this case filed with the court one week before the said date, in order to conform to the rules, though under the circumstances we will not have the usual advantage of examining the brief of appellants prior to the preparation of this brief.

Also, the transcript has not yet been printed, which renders it impossible for us to refer by folio numbers to the transcript.

We reserve for the *Porterfield* and *Terrace* cases a discussion of the sound reasoning advanced by the district courts which led to their conclusion that the alien land acts of California and Washington do not violate either the United States Constitution or the treaty.

In this case we need give but small consideration to any constitutional or treaty question. We need consider practically nothing except whether the interest owned by the ineligible alien is such an interest in agricultural lands as to amount to a violation of the California act. The United States District Court held that the act was violated and we believe that decision to be so manifestly sound as not to require extensive argument to sustain it.

It will not be out of place to recall briefly at the outset some of the objects which the people sought to accomplish by the enactment of the California Alien Land Act.

It was not the acquirement of title in fee alone that this legislation was designed to prevent.

It was the purpose of those who understood the situation to prohibit the enjoyment or possession of, or dominion over, the agricultural lands of the state by aliens ineligible to citizenship. It was the purpose of the people in a practical way to prevent ruinous competition by the oriental farmer against the American farmer. Those who drafted this legislation fully realized that such competition, working through the means of corporate entities, would have the exact practical effect as in the case of the identical individuals competing without having been organized in such corporate entities. It was understood that the American farm home would be subjected to the same ruinous attack and by the same class of oriental labor whether the individual aliens were organized in corporate bodies or not.

The economic clash which it is the sovereign right of the state to prevent is none the less disastrous by reason of the existence of such corporations as the California statute was designed to prohibit.

The destruction of our farm life is not the more desirable because accomplished by orientals holding stock in agricultural corporations, rather than by the same people individually holding the title in fee. California is interested in preventing the destruction of the farm life. California is not particularly interested in one method of destruction, as opposed to another.

Capital stock in corporations in California is, of course, personal property, as that expression is commonly used with reference to the usual ownership of such shares of stock. However, they represent an interest of the owner of the stock in the corporation itself. Assuming that the corporation owns real property, the stockholder has an interest therein to the extent of his shares of stock. The legal title, of course, is in the corporate entity. The corporation, however, owns the same only as an agency for the real owners, who are the stockholders. As such owners of stock representing an interest in real property, these ineligible aliens are subject to the control by this state of their interest in the agricultural lands of this state.

The United States-Japan Treaty might possibly be held to guarantee the right of this ineligible alien to own or inherit corporate shares of stock in an ordinary commercial corporation engaged in trade or commerce, where we would not be concerned with the question of any interest in the agricultural lands of California. But that is not the case here.

Now let us assume a California corporation which owns nothing but agricultural lands in the State of California. Let us assume further that 100 per cent of the capital stock of said corporation belongs to aliens who are ineligible to citizenship in the United States. We submit it is obvious that to permit of such a situation, and prohibit some one person who is so ineligible to citizenship owning the identical

land, would be ridiculous. The purpose of the act is to prevent dominion over and control of such lands in this state by aliens ineligible to citizenship. The courts have held that there is inherent in the states of the Union the power to so control their lands. That question has been settled and, we respectfully submit, is no longer open for serious debate.

If that be so, of what value would such judicial determination be to the states, if the identical prohibited purpose might be accomplished through the mechanical device of setting up a legal entity known as a corporation and permitting ownership of its stock by the same class of ineligible aliens, and then saying that merely by reason of this incorporeal entity being so created, these ineligible aliens might be permitted to so possess and enjoy the agricultural lands of the state?

A share of stock in a corporation is personal property for ordinary purposes. But here we have a rule which has grown up through the years ever since the Year Books of the common law, to permit the citizens and residents native of any country to control their lands. The foundation for the rule that has been established for so many years is the prime necessity of self-preservation. Unless the native citizens of any state are permitted to control the ownership and interest in lands of that state, the state is not secure against foreign attack.

In this case we see an attempt to defeat this most important purpose, the reason for which is so well understood in the law, by setting up the technical

and peculiar attributes of shares of stock in corporations. The rules laid down by our courts with reference to the character of shares of stock, as to their being personalty rather than realty, have been enunciated without any reference to the subject which we are here considering. A share of stock in a corporation may be personalty, for instance, for the purposes of taxation. But what has this to do with our question, which deals with an entirely different subject matter and is addressed to corporate shares of stock from an entirely different viewpoint? The law does not permit of absurdities, and it would be an absurdity to conclude that a share of stock in the corporation before the court is so far personal property that the state is without the right to control as to the ownership thereof by ineligible aliens when it is stock in a corporation owning and dealing in the agricultural lands of the state.

We call attention to the Washington Alien Land Act, which was before the court in the *Terrace* case. It is to be found in chapter 50 of the Laws of Washington, 1920-21, at page 156. Section 2 of said act provides that no alien shall own land or take or hold title thereto, and that no person shall take or hold title to land for an alien. Further, that land now held by or for aliens in violation of the constitution of the state is forfeited and declared to be the property of the state, and that land hereafter conveyed to or for the use of aliens, in violation of the constitution, or of the said Washington Alien Land Law, shall

thereby be forfeited to and become the property of the state.

It is, then, necessary to determine what is meant in said law by the word "alien," and also by the word "land." We find these definitions in section 1 of the act. Section 1, subdivision *a*, provides:

" 'Alien' does not include an alien who has in good faith declared his intention to become a citizen of the United States, but does include all other aliens and *all corporations* and other organized groups of persons *a majority of whose capital stock is owned or controlled by aliens*, or a majority of whose members are aliens; "

A corporation in Washington, the majority of whose stock is owned or controlled by aliens, is to be considered, for the purposes of that act, as an alien.

Subdivision *c* of said section 1 defines land as follows:

" 'Land' also includes *any share or interest in a corporation* or other organized group of persons deemed an alien in this act which has title to land either heretofore or hereafter acquired; "

We therefore see that if the plaintiff in our case, Satow, were in Washington and owned a share in a land-owning corporation the majority of whose stock was owned by aliens, that share of stock, by specific statutory provision, would be land. But land is land, not by reason of statutory expression, but rather by reason of its inherent characteristics. The interest in land, in Washington, would be an interest in real property, without the legislative declaration.

It is our contention that so far as the California Act is concerned, the identical result is reached, only in another way. The purpose of the two acts is the same. It is the intention of the legislation in each case, that ownership by ineligible aliens of agricultural lands of the state be made impossible. California accomplishes this purpose by specifically saying that ineligible aliens can not hold shares of stock in a corporation that owns agricultural lands. In giving expression to this rule, the California Act, in effect, says that such a share of stock in such a corporation is an interest in land. It would be no more such an interest in land, if the act, as in the Washington statute, described it as "land."

Washington accomplishes the identical purpose, only by different technical means. Instead of prohibiting the ownership of such a share of stock, the Washington act defines such a share as being land, and then prohibits the ownership of "land." Of course, there is the additional difference, of no importance to us in this case, that Washington appears to limit the prohibition to cases where a majority of the stock is owned by aliens.

We can see no real difference between the method pursued in Washington and the method pursued in California. Mere phraseology can not defeat the fundamental and clear purposes of the two acts.

Let us assume that this California corporation in our case were dissolved.

It is provided in section 400 of the Civil Code of California that the directors of a corporation, at the time of its dissolution, are trustees for the creditors and stockholders, with full powers to sell the assets thereof, in such manner as the court may direct, and distribute the proceeds of such sales "*and all other assets*" to the stockholders.

The said section 400 reads in part as follows:

"Unless other persons are appointed by the court, the directors or managers of the affairs of a corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, collect and pay outstanding debts, sell the assets thereof in such manner as the court shall direct, and distribute the proceeds of such sales and all other assets to the stockholders. * * *"

If the best interests of the stockholders require it, property may be distributed without its being sold. Agricultural land, for instance, could be divided among the different stockholders. This would be an instance showing, in a practical way, how the corporation is merely holding the legal title for the benefit of the real owners of the land.

The California Alien Land Act treats of the ownership of stock in such corporations as before the court, as an interest in real property. Section 3 provides that a corporation in which a majority of the shares of stock is owned by ineligible aliens, can own real property only as may be permitted by treaty.

Further, to prevent the building up of a corporation so that a minority alien ownership of stock may change to a majority alien ownership, the same section provides that no one share of stock may be acquired by such an alien in such a corporation, except as may be permitted by treaty.

In section 8 the escheat for leasehold and lesser interests in real property is provided for. Again in the same section the escheat of any such shares of stock as are here in question is provided for. The identical escheat procedure is provided in each of these two cases. The attorney general or district attorney of the proper county institutes escheat proceedings, as provided in section 7. In such proceedings the court determines the value of such leasehold or other interest, or of such share or shares of stock, and enters judgment for the state for the amount thereof, together with costs. Thereupon the court orders a sale of such leasehold or other interest or shares of stock, in the manner provided by section 1271 of the Code of Civil Procedure.

Said section 1271 provides in part that:

“in any judgment rendered, or that has heretofore been rendered by any court, escheating property to the State, on motion of the attorney general, the court must make an order that such property, unless it consists of money, be sold by the sheriff of the county where it is situate, at public sale, for gold coin, after giving notice of the time and place of sale, as may be prescribed by the court in such order; * * *”

Out of the proceeds arising from such sale of such leasehold or other interest, or shares of stock, the amount of the judgment so rendered for the state shall be paid into the state treasury, and the balance shall be deposited with and distributed by the court, in accordance with the interests of the parties therein. Here we see that the statute considers this character of stock just as much an interest in land as is a leasehold interest.

Again, in section 6 of the act, which deals with the inheritance by an alien of real property and of shares of stock, the section fixes the same procedure in a probate court in both cases. There is a probate sale and a distribution of the proceeds of the sale to the heir or distributee, in lieu of this property. The land, or any interest therein, and shares of stock of the character that we are considering, are treated as identical for this probate procedure.

Counsel for appellants urged before the District Court that section 3 of the act practically denies to ineligible aliens the right to hold any stock in any California corporation, because almost all of such corporations are

“authorized to acquire, possess, enjoy or convey agricultural land.”

We are concerned, however, only with the facts as here presented, and in paragraphs III and IV of the bill of complaint it is shown that so far as this particular corporation, Merced Farm Company, is

concerned, it does own agricultural lands, and no other properties of said corporation are described.

Plaintiffs here are in no position to argue from the point of view of a holder of stock in a corporation authorized to own real property, but not in fact so owning any such realty.

“It is a firmly established principle of law that the constitutionality of a statute may not be attacked by one whose rights are not affected by the operation of the statute.”

Vol. 12 Corpus Juris, page 760, and the following pages to page 764, with many cases cited.

Included in this text is the following at pages 762 and 763:

“In other words, one attacking the constitutionality of a statute must show that it affects him injuriously and actually deprives him of a constitutional right. It is not sufficient that the statute is unconstitutional as to other persons or classes of persons; it must affirmatively appear that the person attacking the statute comes within the class of persons affected by it.”

It is not necessary for us to consider a point which, in some other case, might be of importance in this connection. We refer to the argument which may be made in support of a construction of the act that would prohibit the ownership of stock by an ineligible alien in corporations having the power to acquire agricultural lands, even though, at the time the stock is acquired, no such stock is so owned by the corpora-

tion. That point is not before this court, and appellants are in no position to urge it. It might, however, be urged in case the question does arise in some other case, that the state would be justified in taking steps to prevent the possible owning of an interest by an ineligible alien in agricultural lands of this state, by prohibiting the acquisition of such stock under such circumstances, which stock might, in the future, be evidence of an interest in such agricultural lands.

However, as above noted, this is mere academic discussion. Counsel also argued in the District Court that unless the articles of incorporation limit the right, such a company would enjoy the privilege of owning agricultural land without any express authorization. The rule is that the corporation could not hold agricultural land unless

First—It is expressly authorized in its articles of incorporation or by statute so to do; or

Second—If not so expressly authorized then there must not be any limitation, by the describing of some particular commercial purpose, for instance, which purpose would not necessarily by implication carry with it the right to own realty.

The purpose of section 3 of the California act seems clear. In the first place, and applying the section to this case, it is provided that any corporation in which a majority of the issued capital stock is owned by aliens subject to the Emperor of Japan and therefore ineligible to citizenship, may acquire,

possess, enjoy and convey real property or any interest therein in this state in the manner and to the extent and for the purposes prescribed by the treaty existing between Japan and the United States, and not otherwise. The effect of this provision is identical with the effect of the provision in section 2 of the act that the same aliens might acquire, possess, enjoy and transfer real property or any interest therein in this state in the manner and to the extent and for the purposes prescribed by this same treaty and not otherwise. That is, the alien mentioned in section 2 and the corporation just described and mentioned in section 3, can not acquire any interest at all in any such real property. The reason for this is that the existing treaty between the United States and Japan does not permit of any such enjoyment or possession of agricultural lands in this state by aliens subject to the Emperor of Japan.

Porterfield vs. Webb, 279 Fed. 114;

Terrace vs. Thompson, 274 Fed. 841.

The only purpose of the affirmative provision that these aliens might hold these interests in the lands of this state, so far as the treaty permits, is to recognize any rights granted by the treaty. But there are no such rights granted. The only right granted is "to lease land for residential and commercial purposes." (U. S. -Japan Treaty of Feb. 21, 1911: Art. I.)

Now, continuing to the final paragraph in section 3, of the Alien Land Act, this paragraph, for the

purposes of this case, refers to ownership of stock by the identical aliens, rather than to the ownership by the corporation itself of lands in this state. Obviously the act having dealt with a corporation where a majority of the stock is owned by ineligible aliens, now takes up other corporations where no such majority ownership by aliens exists. Its clear purpose is to prevent and discourage such a corporation from changing its character to one where the majority of the stock is owned by ineligible aliens. This is done by again providing, as in the first paragraph and as we found in section 2 of the act, with reference to the ownership of real property, that any such ineligible alien may acquire stock in a corporation that is authorized to acquire, possess, enjoy or convey agricultural land in the manner, to the extent and for the purposes prescribed by the treaty existing between the United States and Japan, and not otherwise.

Our theory is that no such right is given by the said treaty. If correct in that theory, plaintiffs can not rely upon the treaty. If incorrect, then the act itself recognizes the right of such an ineligible alien as plaintiff here to own shares of stock in such a corporation.

If the theory of counsel for appellants should prevail, one of the primary purposes of the treaty between Japan and the United States would be defeated. We refer to the purpose expressly shown by the history of the diplomatic negotiations to pro-

hibit the nationals of either country claiming any right to acquire interest in agricultural lands in the other country. This diplomatic history has been pointed out by us in our brief filed with this court in the case of *Porterfield vs. Webb, supra*.

A. TEXTBOOK AND JUDICIAL EXPRESSIONS SUPPORTING OUR ARGUMENT THAT THE OWNER OF A SHARE OF STOCK IN A LANDOWNING CORPORATION HAS AN INTEREST IN THE LANDS OF SUCH CORPORATION.

While the legal title to the land rests in the corporation, the equitable interest and beneficial use are in the shareholders.

The principle in the statement just made is announced in *Corpus Juris*, Vol. 14, page 63, Secs. 27 and 28 as follows:

“(Sec. 27) (7). ‘INTEREST’ IN CORPORATE PROPERTY OR BUSINESS. While the title and ownership of property and business of a private business corporation is vested in the corporation as a distinct legal entity and artificial person, the stockholders or members are nevertheless ‘interested’ therein, within the meaning of statutes and rules of law, since the beneficial interest is in them.”

“(Sec. 28) (8). ACTION OF STOCKHOLDERS OR MEMBERS INDIVIDUALLY SUSTAINED AS ACTION OF CORPORATION. Even when there is no question of fraud or illegality, it is held in some cases, in view of the fact that the property of a corporation really belongs beneficially to the stockholders or members,

that the fiction of corporate entity may be disregarded, where no rights of creditors or other third persons are affected, and effect may be given in equity to the action of all the stockholders and members of a corporation although as individuals and without formal corporate action, in distributing among themselves or otherwise disposing of the property of the corporation, or authorizing its officers to do so, just as if there had been formal corporate action in the premises. The rule has also been applied in other cases."

Recognition of this principle is shown by Mr. Justice Marshall in *Huber vs. Martin*, 105 N. W. 1031, at page 1037:

"Where is the ownership of the net assets of a mutual insurance company located? That the legal title is in the corporation goes without saying. The rule in that regard must be the same in case of one corporation as another. Why is not the equitable right—the real beneficiary interest—independently of the corporate use, vested in the members of the corporation in one case the same as in the other? It would seem that after the corporate purposes are exhausted, the property of every business corporation belongs to its members, is self-evident."

The principle is clearly set out by Mr. Pomeroy in his "Equity Jurisprudence," Vol. 3, at page 982, as follows:

"According to this theory, every ownership—property itself—consisted of a legal title and of a use. These two might be combined and held by

the same person, and their union would thus constitute the highest or ideal dominion; or they might be, and often were, separated, and held by different persons; but of the two, the use was the more important, since it represented the real, substantial, usufructuary proprietorship, while the other might be the naked legal estate, drawing after it or conferring no beneficial rights of enjoyment whatsoever. While the legal title and the seisin always existed in some person, and remained subject to the common law dogmas, the use, being a creature of equity, was entirely free from the feudal burdens and from the restrictions growing out of the common law theory as to seisin."

Mr. Fletcher in his "Cyclopedia Corporations," Vol. 5, paragraph 3417, page 5595, recognizes the rule in this language:

"It was said in a New York case that 'the right which a shareholder in a corporation has by reason of his ownership of shares, is a right to participate according to the amount of his stock in the surplus profits of the corporation on a division, and ultimately on its dissolution, in the assets remaining after payment of its debts.' "

And at pages 5596 and 5597, same paragraph:

"The equitable interest of the shareholder in the property of the corporation 'is represented by the term 'stock,' and the extent of his interest is described by the term 'shares.' The expression 'shares of stock,' when qualified by words indicating number and ownership, expresses the extent of the owner's interest in the corporation property."

This interest of the shareholders in the property of a corporation is set forth in Clark & Marshall's "Private Corporations," at pages 23 and 24:

"(f) STOCKHOLDERS ARE 'INTERESTED' IN PROPERTY OF CORPORATION. Though the title to the property of a corporation is in the corporation, and not in the stockholders, the stockholders are undoubtedly *interested* therein. Though the title is in the corporation, the beneficial interest is in the stockholders in proportion to their shares. It has been held, therefore, that the stockholders of a corporation have an insurable interest in its property.

"For the same reason, a stockholder is *interested* in an action by or against the corporation, although not technically a party thereto, and would be within a statute disqualifying, as judge or juror, a person interested in an action. And under a statute imposing a tax upon 'persons interested in the use' of a distillery, it has been held that the stockholders of a corporation operating a distillery are liable.

"(g) MORTGAGE BY STOCKHOLDERS ENFORCEABLE IN EQUITY. Since a corporation is in reality a collection of persons, who have the beneficial interest in its property, a court of equity may give effect to their acts in relation to the property, although they may have been done by them as individuals, and not as the agents of the corporation, nor in its name. As we have seen in another section, a mortgage executed by all the stockholders of a corporation in their own names merely, and as individuals, and covering

the property of the corporation, is not a good *legal* mortgage, for in law they do not own the property of the corporation. It is, otherwise, however, in equity. A court of equity, in such a case, will look beyond the corporation, regarded as a legal entity distinct from its stockholders, and will recognize *the fact* that the substantial, beneficial ownership of the property is in them, and that the corporation holds it for them, and will enforce the mortgage not only against the stockholders, but also as against the equitable demands of subsequent purchasers or incumbrancers with notice from the corporation."

The same doctrine is recognized by Morawetz, who in "Morawetz on Private Corporations," at page 1, says:

"The existence of a corporation independent of its shareholders is a fiction; its rights and duties are in reality the rights and duties of persons who compose it, and not of an imaginary being."

This is quoted approvingly by the Supreme Court of California, in *San Diego Gas Company vs. Frame*, 137 Cal. 447. The Court says:

"The stockholders individually can not sue or be sued in respect to their interests in the property held in the name of the corporation; the litigation must be by or against the corporation. And to turn a corporation out of court summarily, as in this case, is to deny the real parties in interest—the stockholders—the right to protect their property according to law."

The doctrine, as thus presented by the above text, is universally observed and applied by the courts. So far as we are aware, the correctness of these rules has never been judicially questioned.

II.

THE UNITED STATES-JAPAN TREATY DOES NOT PROTECT THE INELIGIBLE ALIEN APPELLANT IN HIS ACQUIRING THE SHARES OF STOCK IN THIS CASE ON ACCOUNT OF SAID SHARES HAVING CERTAIN ATTRIBUTES OF PERSONAL PROPERTY.

The position of appellants in this case, which the District Court refused to follow, must be that the interest of the plaintiff Frick or of plaintiff Satow in the capital stock of the Merced Farm Company is personal property, and of such a character as personal property that there must be a conclusion in law that the rights of the alien plaintiff Satow, or the rights of the citizen plaintiff Frick, are violated, as such rights are guaranteed either by the United States-Japan Treaty or by the Fourteenth Amendment to the United States Constitution.

We are confident that the case will be disposed of on the first point suggested in this brief, and that the court will conclude that in fact the interest in stock of a corporation of this character is such as to be an interest in real property consisting of agricultural lands in California and, therefore, properly subject to such state control, as has been recognized by the decisions of the United States district courts.

We shall, however, now consider this other phase of the question as to the possibility of considering the interest of the appellants herein in stock in this agricultural landholding corporation to have certain characteristics of personal property, and the bearing that the treaty with Japan and the Fourteenth Amendment to the United States Constitution have upon such character of property.

We shall first consider the treaty.

Our position with reference to the treaty is that its history and its context show that it is peculiarly a treaty of commerce, trade and navigation, and intended to cover those subjects only. Further, it is our position that the matter of interest in a corporation, which corporation in turn owns agricultural lands in this state which it may either hold for agricultural uses or sell, does not come within the scope of a treaty that deals with commerce, trade and navigation.

So far as development of such lands by the corporation itself is concerned, certain comments by the court in the *Terrace* case, *supra*, are of interest. In that case the District Court addressed itself to the claim that the complainant Nakatsuka's business of farming was incidental to his business as a wholesale and retail trader in farm products, and used the following language with reference to this argument:

"A clear intention being shown not to supersede, in the particular now in question, the state's authority to regulate the rights of title and possession in lands within its boundaries, that intent

may not be defeated by the claim now made that complainant Nakatsuka's business of farming is incidental to his business as a wholesale and retail trader in farm products, for there is no more reason for considering farming an incident of the latter than for considering the latter an incident of the former. The language of the treaty is: 'and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects * * *.' (37 Stat. at L. 1504.)

"In the most liberal construction of this language that may be indulged in, it can not fairly be said that truck farming is incidental to trading, either wholesale or retail, in the products of a farm, any more than conducting a sheep ranch or growing mulberry trees incidental to the dry goods trade.

Kidd vs. Pearson, 128 U. S. 1;

United States vs. E. C. Knight Co., 156 U. S. 1;

Joyce vs. Auten, 179 U. S. 591, at 594;

Capital City Dairy Co. vs. Ohio, 185 U. S. 238, 245."

The petition in this case alleges that

"the Merced Farm Company, a corporation duly organized under the laws of the State of California * * * is the owner of, and by its articles of incorporation authorized to acquire, possess, enjoy and convey agricultural land." (Paragraph III of the petition.)

Also, in paragraph IV of the petition, there is the allegation

"that the said Merced Farm Company is a corporation organized and existing under the laws of

the State of California and is authorized to acquire, possess, enjoy and convey agricultural land in the State of California, and is now the owner of and in the possession of a large amount of agricultural land, to wit: about twenty-two hundred acres in the county of Merced, in said State of California, * * *."

There is no allegation as to the use to which this land is being put, but, in any event, it is submitted that no possible use of the land could be considered as engaging in commerce or trade.

By "commerce" and "trade," is meant the ordinary commercial relationships and the purpose is to guarantee to the nationals of the high contracting parties the right to engage in trade as such in both countries.

We shall now quote from the United States-Japan Treaty and italicize language showing that the treaty is essentially one dealing with commerce and trade.

The treaty is entitled "Treaty of Commerce and Navigation with Japan."

The preamble to the United States-Japan Treaty recites that the President of the United States of America and His Majesty, the Emperor of Japan, being desirous to strengthen the relations of amity and good understanding between two nations

"and believing that the fixation in a manner clear and positive of the rules *which are hereafter to govern the commercial intercourse between their respective countries* will contribute to the realiza-

tion of this most desirable result, have resolved to conclude a treaty of *commerce and navigation for that purpose, * * *.*”

Article I provides that :

“The citizens or subjects of each of the high contracting parties shall have liberty to enter, travel, and reside in the territories of the other, to *carry on trade, wholesale and retail*, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and *commercial* purposes, and *generally to do anything incident to or necessary for trade* upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.”

Article II provides that :

“The dwellings, *warehouses, manufactories and shops* of the citizens or subjects of each of the high contracting parties in the territories of the other, and all premises appertaining thereto used for purposes of residence or *commerce*, shall be respected.”

Article IV provides that :

“There shall be between the territories of the two high contracting parties reciprocal freedom of *commerce and navigation*. The citizens or subjects of each of the contracting parties, equally with the citizens or subjects of the most favored nation, shall have liberty freely to come *with their ships and cargoes* to all places, ports and rivers

in the territories of the other which are or may be open to foreign *commerce*, subject always to the laws of the country to which they thus come."

Article VI provides that:

"The citizens or subjects of each of the high contracting parties shall enjoy in the territories of the other exemption from all transit duties and a perfect equality of treatment with native citizens or subjects *in all that relates to warehousing, bounties, facilities and drawbacks.*"

Article VII provides that:

"Limited-liability and other companies and associations, commercial, industrial and financial,"

in either of said countries are authorized in the territories of the other to exercise their rights.

Article XI provides that:

"No duties of *tonnage, harbor, pilotage, light-house, quarantine*, or other similar or corresponding duties of whatever denomination,"

levied in the name or for the profit of government, etc., shall be imposed in the ports of the territories of either country upon the vessels of the other unequally.

Article XIII provides that:

"The *coasting trade* of the high contracting parties is excepted from the provisions of the present treaty," etc.

Article XIV provides that:

“Except as otherwise expressly provided in this treaty, the high contracting parties agree that, in *all that concerns commerce and navigation*,”

there shall be a “most favored nation” agreement.

Article XV provides that:

“The citizens or subjects of each of the high contracting parties shall enjoy in the territories of the other the same protection as native citizens or subjects *in regard to patents, trade-marks and designs*, upon fulfillment of the formalities prescribed by law.”

Shares of stock in such a mercantile corporation, for instance, as a department store, or a store dealing in Japanese articles, might be considered such personal property as to come within the treaty guaranty of ownership thereof. This is a far cry from owning shares of stock in a corporation which, so far as the bill of complaint herein shows, does not, in any single particular, engage in a mercantile, commercial or trade pursuit. If, indeed, the shares of stock in this particular corporation are, as a matter of law, to be considered personal property, then we submit that for the purposes of this case and having in view the objects sought to be attained not only by the Alien Land Act but by the treaty itself, this stock is so impressed with an interest in agricultural lands of this state as to take it without the guarantees of the treaty.

Counsel for appellants in the District Court quoted from Blackstone's Commentaries concerning the

right of an alien to hold chattels real and all kinds of personal property.

No complaint can be found with these quotations from the common law. Blackstone but expressed the rule obtaining at the time he wrote, and that rule, limited in its application to the life and the activities of his day, did no violence. But Blackstone was not speaking of the shares of stock in a corporation. We are not to be chained to the fetish of a dead past, unless there be such an identity of the conditions then and now as to warrant the application of the rule adopted to meet the situation then to the conditions now existing. Some one has expressed a truth that should be inscribed on the cover of every law book, in the following language:

“Our law is not a memorial to the dead, but a rule for the living.”

Justice Crane of the New York Court of Appeals said:

“The two sources of the law are to be found, first in the books, and second, in the life about us.”

Those who negotiated the treaty between the United States and Japan had very definitely in mind just what guarantees were to be given to the nationals of the respective countries, and they also had just as definitely in mind what limitations were to be placed upon these nationals. It was intended that citizens or subjects of the respective countries might engage in trade, commerce and navigation in either

country. It was also intended and particularly provided by amendments to the treaty during the course of the diplomatic negotiations, that no national of either country could claim any interest in the agricultural lands of the other country. If the theory of appellants is sustained, this fundamental purpose of the treaty-makers will be defeated.

We give a full discussion of the diplomatic history of the treaty in our brief here filed in the *Porterfield* case, *supra*.

We therefore urge that counsel can not successfully rely upon the treaty to support their thesis.

III.

THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION DOES NOT PROTECT EITHER THE INELIGIBLE ALIEN APPELLANT OR THE CITIZEN APPELLANT IN THEIR DEALING WITH THE SHARES OF STOCK IN THIS CASE ON ACCOUNT OF SAID SHARES OF STOCK HAVING CERTAIN ATTRIBUTES OF PERSONAL PROPERTY.

Now as to the Fourteenth Amendment to the United States Constitution. Appellant Frick, the citizen, and also the alien appellant, Satow, are entitled to claim the protection of that portion of the Fourteenth Amendment which prohibits the states from depriving any person of life, liberty, or property, without due process of law, or denying to any person within their jurisdiction the equal protection of the laws.

The citizen appellant, but not the alien appellant, may also claim the protection of that part of the

Fourteenth Amendment which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

The decisive answer to any argument by citizens or by aliens that they are entitled to the protection of the Fourteenth Amendment in such a case as we are here considering is, that the federal courts of this country have determined, in many cases, that that amendment can not be used as an instrument to deprive the states of the Union of their inherent and historical power to control in the matter of ownership or other interest in lands, when a question arises as to prohibiting such an interest being vested in an alien. This point has been decided in the *Porterfield* and *Terrace* cases and in the many cases cited in those decisions.

Chirac vs. Chirac, 2 Wheat. 259, 272;

Hauenstein vs. Lynham, 100 U. S. 483, 484;

DeVaughan vs. Hutchinson, 165 U. S. 566, at 570;

Clarke vs. Clarke, 178 U. S. 186;

Blythe vs. Hinckley, 180 U. S. 333.

We again submit on this point that if these shares of stock are to be treated as having some of the characteristics of personal property, in the nature of things the courts must recognize that flowing from the ownership of such "personal property" is the inevitable right to share in the profits and proceeds of the agricultural lands of the State of California.

It is because of that right which accompanies the ownership of this stock that we are justified in basing our defense on long established precedent, which refuses to recognize the Fourteenth Amendment as being intended to guarantee any such right to an alien.

Respectfully submitted.

U. S. WEBB,
Attorney General of the
State of California,
FRANK ENGLISH,
Deputy Attorney General,
MATTHEW BRADY,
District Attorney of the City and
County of San Francisco,
State of California,
Attorneys for Defendants and Appellees.

APPENDIX.

Exhibit A.

CALIFORNIA ALIEN LAND LAW OF 1920.

(Statutes of California, 1921, page lxxxiii.)

An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this state, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith.

The people of the State of California do enact as follows:

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent, and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Sec. 3. Any company, association or corporation organized under the laws of this or any other state or nation, of which a majority of the members are aliens other than those specified in section one of this act, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise. Hereafter all aliens other than those specified in section one hereof

may become members of or acquire shares of stock in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Sec. 4. Hereafter no alien mentioned in section two hereof and no company, association or corporation mentioned in section three hereof, may be appointed guardian of that portion of the estate of a minor which consists of property which such alien or such company, association or corporation is inhibited from acquiring, possessing, enjoying or transferring by reason of the provisions of this act. The public administrator of the proper county, or any other competent person or corporation, may be appointed guardian of the estate of a minor citizen whose parents are ineligible to appointment under the provisions of this section.

On such notice to the guardian as the court may require, the superior court may remove the guardian of such an estate whenever it appears to the satisfaction of the court:

(a) That the guardian has failed to file the report required by the provisions of section five hereof; or

(b) That the property of the ward has not been or is not being administered with due regard to the primary interest of the ward; or

(c) That facts exist which would make the guardian ineligible to appointment in the first instance; or

(d) That facts establishing any other legal ground for removal exist.

Sec. 5. (a) The term "trustee" as used in this section means any person, company, association or corporation that as guardian, trustee, attorney-in-fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien mentioned in section two hereof, or to the minor child of such an alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying or transferring it.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state

of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control;

(3) An itemized account of all expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

Sec. 6. Whenever it appears to the court in any probate proceeding that by reason of the provisions of this act any heir or devisee can not take real property in this state or membership or shares of stock in a company, association or corporation which, but for said provisions, said heir or devisee would take as such, the court, instead of ordering a distribution of such property to such heir or devisee, shall order a sale of said property to be made in the manner provided by law for probate sales of property and the proceeds of such sale shall be distributed to such heir or devisee in lieu of such property.

Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to, and become and remain the property of the State of California. The attorney general or district attorney of the proper county shall institute proceedings to have the escheat of such real property adjudged and enforced in the manner provided by section four hundred seventy-four of the Political Code and title eight, part three of

the Code of Civil Procedure. Upon the entry of final judgment in such proceedings, the title to such real property shall pass to the State of California. The provisions of this section and of sections two and three of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon, or interest in such property, so long as such real property so acquired shall remain the property of the alien, company, association or corporation acquiring the same in such manner. No alien, company, association or corporation mentioned in section two or section three hereof shall hold for a longer period than two years the possession of any agricultural land acquired in the enforcement of or in satisfaction of a mortgage or other lien hereafter made or acquired in good faith to secure a debt.

Sec. 8. Any leasehold or other interest in real property less than the fee, hereafter acquired in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to the State of California. The attorney general or district attorney of the proper county shall institute proceedings to have such escheat adjudged and enforced as provided in section seven of this act. In such proceedings the court shall determine and adjudge the value of such leasehold or other interest in such real property, and enter judgment for the state for the amount thereof together with costs. Thereupon the court shall order a sale of the real property covered by such leasehold, or other interest, in the manner provided by section twelve hundred seventy-one of the Code of Civil Procedure. Out of the proceeds arising from such sale, the amount of the judgment rendered for the state shall be paid into the state treasury and the balance shall be deposited with and distributed by the court in accordance with the interest of the parties therein. Any share of stock or the interest of any member in a company, association or corporation hereafter acquired in violation of the provisions of section three of this act shall escheat to the State of California. Such escheat shall be adjudged and enforced in the same manner as provided in this section for the escheat of a leasehold or other interest in real property less than the fee.

Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and

the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following groups of facts:

(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof;

(b) The taking of the property in the name of a company association or corporation, if the memberships or shares of stock therein held by aliens mentioned in section two hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or the issued capital stock of such company, association or corporation;

(c) The execution of a mortgage in favor of an alien mentioned in section two hereof if said mortgagee is given possession, control or management of the property.

The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein.

Sec. 10. If two or more persons conspire to effect a transfer of real property, or of an interest therein, in violation of the provisions hereof, they are punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand dollars, or both.

Sec. 11. Nothing in this act shall be construed as a limitation upon the power of the state to enact laws with respect to the acquisition, holding or disposal by aliens of real property in this state.

Sec. 12. All acts and parts of acts inconsistent or in conflict with the provisions hereof are hereby repealed; provided, that—

(a) This act shall not affect pending actions or proceedings, but the same may be prosecuted and defended with the same

effect as if this act had not been adopted;

(b) No cause of action arising under any law of this state shall be affected by reason of the adoption of this act whether an action or proceeding has been instituted thereon at the time of the taking effect of this act or not and actions may be brought upon such causes in the same manner, under the same terms and conditions, and with the same effect as if this act had not been adopted;

(c) This act in so far as it does not add to, take from or alter an existing law, shall be construed as a continuation thereof.

Sec. 13. The legislature may amend this act in furtherance of its purpose and to facilitate its operation.

Sec. 14. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The people hereby declare that they would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**FRICK ET AL. v. WEBB, ATTORNEY GENERAL OF
THE STATE OF CALIFORNIA, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA.**

No. 111. Argued April 23, 24, 1923.—Decided November 19, 1923.

Section 3 of the California Alien Land Law, permitting aliens ineligible to citizenship to "acquire shares of stock in any . . . corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty . . . and not otherwise," renders illegal a contract between a citizen of the State and a Japanese alien for sale by the one to the other of shares in such a corporation, and is consistent with the treaty between the United States and Japan and the due process and equal protection clauses of the Fourteenth Amendment. P. 333. See *Porterfield v. Webb*, and *Webb v. O'Brien*, ante, pp. 225, 313.

281 Fed. 407, affirmed.

APPEAL from an order of the District Court refusing an interlocutory injunction in a suit to restrain officials of the State of California from enforcing the California Alien Land Law.

Mr. Louis Marshall for appellants.

I. Assuming that the ownership of shares of stock in a California corporation having the title to agricultural land constitutes an interest in such land, the California Alien Land Law, which forbids aliens ineligible to citizenship under the laws of the United States to acquire such shares, although the right to do so has been conferred on all other aliens, denies to the former the equal protection of the laws within the meaning of the Fourteenth Amendment.

II. The prohibition of the acquisition by an ineligible alien of shares of stock in a California corporation owning agricultural land, such shares being personal property, while all other aliens are expressly permitted to acquire such shares, denies to the former the equal protection of the laws.

The disability of aliens at common law in respect to ownership of real estate does not extend to personal property. Aliens are capable of acquiring, holding and transmitting it in the like manner as citizens. This includes the right to take and hold personal property by bequest, and the right of an alien testator to pass his personalty by will. *Calvin's Case*, 7 Coke, 17a; *Fourdrin v. Gowdey*, 3 Mylne & Keen, 397; 1 Black. Com. 372; 2 Kent Com. 62; *McLearn v. Wallace*, 10 Pet. 625; *Beck v. McGillis*, 9 Barb. 35; *Meakings v. Cromwell*, 5 N. Y. 136; *Cosgrove v. Cosgrove*, 69 Conn. 416; *Detwiler v. Commonwealth*, 131 Pa. St. 614; *Cleveland, etc. Ry. Co. v. Osgood*, 36 Ind. App. 34; *Marx v. McGlynn*, 88 N. Y. 357.

It has long been well settled that shares of stock in a corporation are personal property, whether they be declared such by statute, as is sometimes the case, or not, and whether the property of the corporation itself consists of realty, as in the case of mining, land, realty and canal companies, and the like, or of personal property only. Cal. Civ. Code, § 324.

The California courts have held shares of stock to be personalty.

That a sale of shares of stock comes within the terms of the statute of frauds, whether the act refers to "goods, wares and merchandise," or to "personal property," or to "goods or choses in action," is recognized, with practical unanimity, by the American courts.

This case presents an entirely different aspect from the one where the State is seeking to debar aliens from the ownership of real property in accordance with a policy that quite generally prevails and which, if applied equally to all aliens, would not militate against any constitutional prohibition. Even had the California act undertaken to declare a share of stock real estate, that would not have made it so, or have brought it within the reason of the rule which permits a State to inhibit ownership by aliens of real property within its territory.

Such legislation, even if made applicable to all aliens regardless of race, color or nationality, would come within the rule laid down in *Truax v. Raich*, 239 U. S. 33; *Ex parte Kotta*, 62 Cal. Dec. 315; *Fraser v. McConway & Torley Co.*, 82 Fed. 257; *State v. Montgomery*, 94 Me. 192; and *Truax v. Corrigan*, 257 U. S. 312; and would sin against the fundamental principle laid down in *Yick Wo v. Hopkins*, 118 U. S. 356; *Gulf, Colo. & Santa Fe Ry. Co. v. Ellis*, 165 U. S. 150, and the other leading cases in which the equality clause of the Fourteenth Amendment has been interpreted and applied.

The nature of a share of stock as property must be determined by its inherent characteristics and physical qualities, and not by a legislative fiat. In this act we have not, however, a prohibition of all aliens against the acquisition of the ownership of shares of stock in a corporation owning agricultural lands, but such right of ownership is sought to be withheld from aliens ineligible to citizenship solely because of their race, color and nationality.

By the same token, the legislature might make like restrictions with regard to the acquisition of shares of stock in a company authorized to possess lands for other than agricultural, residential and commercial purposes. That would include corporations operating mines, railways, oil properties, quarries and water works, all of which are basically founded on the ownership of land.

III. Under a fair interpretation of that portion of § 3 of the Alien Land Law on which the appellees rely, the proposed sale to and purchase by Satow of shares of stock of the Merced Farm Company is not prohibited.

IV. The act, as applied, is unconstitutional because it deprives the citizen appellant of the right to enter into a contract for the sale of his shares of stock and because it deprives the alien appellant of his liberty by debarring him from entering into a contract for the purchase of corporate shares. *Yick Wo v. Hopkins*; *Truax v. Raich*; *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 746; *Allgeyer v. Louisiana*, 165 U. S. 578; *Smith v. Texas*, 233 U. S. 630; and *Coppage v. Kansas*, 236 U. S. 1.

V. Section 3 of the act, as interpreted by the State, offends against the treaty between the United States and Japan, which permits the citizens or subjects of the respective parties to have liberty "to carry on trade, wholesale and retail," in the respective territories of the contracting nations, "and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects."

To "carry on trade" is to engage in commerce in any or all of its various phases. It is the business of exchanging commodities by buying and selling them for money. Those commodities need not necessarily be merchandise, but, in the colloquial sense of the word, they may be such securities as are "traded in" on the exchanges or in transactions between man and man. *United States v. American Tobacco Co.*, 164 Fed. 700; *United*

States v. Douglas, 190 Fed. 482; *Finnegan v. Noerenberg*, 52 Minn. 239; *People v. Blake*, 19 Cal. 579; *State v. Hunt*, 129 N. C. 686; *May v. Sloan*, 101 U. S. 231; *Bank of United States v. Norton*, 10 Ky. 422; *Fleckner v. United States Bank*, 8 Wheat. 338; *Champion v. Ames*, 188 U. S. 321.

Mr. U. S. Webb, Attorney General of the State of California, with whom Mr. Frank English, Deputy Attorney General, and Mr. Matthew Brady were on the brief, for appellees.

I. The ownership of a share of stock in a California agricultural corporation constitutes an interest in agricultural lands, prohibited to ineligible aliens by the Alien Land Act. It was the purpose of those who understood the situation to prohibit the enjoyment or possession of, or dominion over, the agricultural lands of the State by aliens ineligible to citizenship,—in a practical way to prevent ruinous competition by the Oriental farmer against the American farmer. Those who drafted this legislation fully realized that such competition, working through the means of corporate entities, would have the exact practical effect as in the case of the identical individuals competing without having been organized in such corporate entities.

Shares in corporations in California are, of course, personal property, as that expression is commonly used with reference to the usual ownership of such shares. But they represent an interest in the corporation itself; and, if it owns real property, an interest in that to the extent of the shares of stock. The legal title is in the corporation, but as an agency for the real owners,—the stockholders. As such owners these ineligible aliens are subject to the control by the State of their interest in the agricultural lands.

The Japan Treaty might possibly be held to guarantee the right of this ineligible alien to own or inherit shares

in an ordinary commercial corporation engaged in trade or commerce, where no interest in the agricultural lands of California was involved. The courts have held that there is inherent in the States the power so to control their lands. Of what value would this be if the prohibited purpose might be accomplished through the mechanical device of a corporation? See the definitions of "land" in the Washington law involved in *Terrace v. Thompson* [ante, 197]. If this California corporation were dissolved, under § 400 of the Civil Code, the directors would become trustees, with full powers to sell all the assets. If the best interests of the stockholders required it, the agricultural land could be divided among them. The statute considers the stock as much an interest in land as is a leasehold interest.

Appellants urged before the District Court that § 3 of the act practically denies to ineligible aliens the right to hold any stock in any California corporation, because almost all of such corporations are "authorized to acquire, possess, enjoy or convey agricultural land." We are concerned, however, only with the facts as here presented. This particular corporation owns agricultural lands and no other properties of said corporation are described in the bill of complaint.

II. The treaty does not protect the ineligible alien appellant in acquiring the shares of stock because of their having certain attributes of personal property.

III. The Fourteenth Amendment does not protect either the ineligible alien appellant or the citizen appellant in their dealing with the shares of stock in this case on account of said shares having certain attributes of personal property.

MR. JUSTICE BUTLER delivered the opinion of the Court.

This is a suit brought by the appellants to enjoin the above named Attorney General and District Attorney

from enforcing the California Alien Land Law,¹ submitted by the initiative and approved by the electors, November 2, 1920, on the grounds that it is in conflict with the due process and equal protection clauses of the Fourteenth Amendment, and with the treaty between the United States and Japan.

Appellants are residents of California. Frick is a citizen of the United States and of California. Satow was born in Japan of Japanese parents and is a subject of the Emperor of Japan. Frick is the owner of 28 shares of the capital stock of the Merced Farm Company, a corporation organized under the laws of California, that owns 2,200 acres of farm land in that State. Frick desires to sell the shares to Satow and Satow desires to buy them. By the complaint, it is alleged in substance that the appellees have threatened to and will enforce the act against appellants if Frick sells such stock to Satow, and will institute proceedings to escheat such shares to the State as provided in the act; that, but for the provisions of the act and such threats, Frick would sell and Satow would buy the stock. And it is averred that the act is so drastic and the penalties attached to its violation are so great that appellees are deterred from carrying out the sale, and that unless the court shall determine its validity in this suit, appellants will be compelled to submit to it whether valid or invalid.

Appellants applied for an interlocutory injunction to restrain appellees during the pendency of the suit from instituting any proceeding to enforce the act against appellants. The application was heard by three judges as provided in § 266 of the Judicial Code. The motion was denied, and the case is here on appeal from that order.

¹ The substance of the portions of the act which are material in this case is printed in the margin of *Webb v. O'Brien*, decided this day, *ante*, 319.

In *Porterfield v. Webb*, ante, 225, and *Webb v. O'Brien*, decided this day, ante, 313, we held that the act does not conflict with the Fourteenth Amendment or with the treaty between the United States and Japan. In the case first mentioned, we held that the act prohibits the leasing of agricultural land by citizens of the United States to a Japanese alien, and in the latter that it prohibits the making of a cropping contract between a citizen and a Japanese alien.

The treaty does not grant permission to the citizens or subjects of either of the parties in the territories of the other to own, lease, use or have the benefit of lands for agricultural purposes, and, when read in the light of the circumstances and negotiations leading up to its consummation, the language shows that the parties respectively intended to withhold a treaty grant of that privilege. *Terrace v. Thompson*, ante, 197; *Same v. Same*, 274 Fed. 841, 844, 845. The applicable provision of § 3 of the act is: Hereafter all ineligible aliens "may . . . acquire shares of stock in any . . . corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty . . . and not otherwise." The provisions of the act were framed and intended for general application and to limit the privileges of all ineligible aliens in respect of agricultural lands to those prescribed by treaty between the United States and the nation or country of which such alien is a citizen or subject. The State has power, and the act evidences its purpose to deny to ineligible aliens permission to own, lease, use or have the benefit of lands within its borders for agricultural purposes. *Webb v. O'Brien*, supra. "As the State has the power . . . to prohibit, it may adopt such measures as are reasonably appropriate or needful to render exercise of that power effective." *Crane v. Campbell*, 245 U. S. 304, 307, and

cases cited; *Hebe Co. v. Shaw*, 248 U. S. 297, 303. It may forbid indirect as well as direct ownership and control of agricultural land by ineligible aliens. The right "to carry on trade" given by the treaty does not give the privilege to acquire the stock above described. To read the treaty to permit ineligible aliens to acquire such stock would be inconsistent with the intention and purpose of the parties. We hold that the provision of § 3 above referred to does not conflict with the Fourteenth Amendment or with the treaty.

The order appealed from is affirmed.

MR. JUSTICE McREYNOLDS and MR. JUSTICE BRANDEIS think there is no justiciable question involved and that the case should have been dismissed on that ground.

MR. JUSTICE SUTHERLAND took no part in the consideration or decision of this case.

STREET, SUING ON BEHALF OF HIMSELF AND
ALL OTHER SEAMEN ENGAGED